CB(II) No.55

COMMITTEE ON SUBORDINATE LEGISLATION

FIRST REPORT

(Second Lok Sabha)

(Presented on the 12th September, 1957)

सत्यमेव जयते

LOK SABHA SECRETARIAT
NEW DELHI
September, 1957

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COMPOSITION OF THE COMMITTEE ON SUBORDINATE LEGISLATION
(1957-58)

1. Sardar Hukam Singh - *Chairman*
2. Shri Phani Gopal Sen
3. Shri Anand Chandra Joshi
4. Shri Harish Chandra Mathur
5. Shri R.M. Hajarnavis
6. Shri K S. Ramaswamy
7. Shri Sinhasan Singh
8. Shri Jitendra Nath Lahiri
9. Shri Bahadur Singh
10. Shri T.N Viswanatha Reddy
11. Shri Shamrao Vishnu Parulekar
12. Shri Aurobindo Ghosal
13. Shri J M. Mohamed Imam
14. Dr A. Krishnaswami
15. Shri Braj Raj Singh

SECRETARIAT

Shri S.L. Shakdher - *Joint Secretary.*

Shri N.N. Mallya - *Deputy Secretary.*

Shri A.L. Rai - *Under Secretary.*

I

INTRODUCTION

I, the Chairman of the Committee on Subordinate Legislation, having been authorised by the Committee to present the report on their behalf present this their First Report.

2. The Committee was nominated by the Speaker on the 5th June, 1957.

3. The Committee have held three sittings and considered 458 new 'Orders' The Committee also considered the 'orders' that were pending final disposal at the time of the presentation of the Sixth Report of the Committee of the First Lok Sabha. At a sitting held on the 11th September, 1957 the Committee considered this Report and passed it.

4. Observations of the Committee on matters of special interest, made during the course of their examination of the 'orders', matters which required to be brought to the notice of the House, as well as the recommendations of the Committee have been included in this Report.

II

THE MINES RULES, 1955 (S.R.O. 1421 of 1955)

5. The Mines Rules, 1955 (S.R.O. 1421 of 1955) were made under Section 58 of the Mines Act, 1952.

6. *Rule 7(3)* :- This rule provided that the resignation of the Chairman or Member of the Mining Board shall take effect from the date of its acceptance by the Central Government or the Chairman as the case may be.

7. This provision was not in accordance with an earlier recommendation of the Committee in a similar case that some time limit should be specified in the Rules within which the authority concerned must take a

decision on the letter of the resignation of a member or the Chairman (Para 29 of the Third Report presented to the First Lok Sabha).

8. The Committee are glad to note that the Ministry of Labour to whom the point was referred, have since amended the rule providing for a period of thirty days within which resignation of a member or the Chairman is to be accepted. (Vide S.R.O. 2062 of 1957).

III

AMENDMENT TO THE NASIRABAD CANTONMENT BYE-LAWS REGARDING GRAZING OF ANIMALS (S.R.O. 336 of 1955 PART II SECTION OF THE GAZETTE).

9. S.R.O. 336 of 1955 which amends the Nasirabad Cantonment Bye-laws lays down that no animal shall be permitted to graze on the Cantonment grazing land without a permit to be obtained from the executive officer on payment of such grazing fee as may be fixed by the Cantonment Board.

10. This S.R.O. was made under clause 21 of Section 282(1) of the Cantonments Act, 1924 which empowers the Board to make bye-laws for "the regulation of the grazing of animals."

11. A question arose whether the Cantonment Board could appropriately levy grazing fees under the said provision.

12. The Ministries of Law and Defence, to whom the matter was referred stated as under:-

Ministry of Law:

> "The power to regulate the grazing of animals would, in my view, include the power to issue passes or permits for grazing; any provision that no animal shall be grazed without a permit or pass issued by a specified authority would be *intra vires* section 282(21) of the Cantonments Act. Of course

unless the Act confers specified powers in this behalf, any bye-laws made under that clause cannot impose a fee on these passes or permits. I may draw attention to clause (26) which expressly provides for prescribing fee payable for licences required under clause (25). In the absence of a similar provision in regard to the other clauses, I am of the opinion that the levy of a fee for the issue of permits or passes with reference to clause (21) is incompetent.''

Ministry of Defence:

All lands situated within Nasirabad Cantonment are the property of the Central Government.

x x x x x

It is considered that ownership confers on the Government and *ipso facto* on the Cantonment Board the right to deny permission to graze cattle on Government land without payment of charges as may be fixed by the Government or by the Board on their behalf.

x x x x x

It might be that a bye-law under clause (21) of Section 282(1) of the Cantonments Act, 1924, cannot appropriately prescribe rates of grazing fee, but this right of the Cantonment Board or the Military Estates Officer to collect grazing fee arises by virtue of ownership of the land and perhaps cannot be questioned.''

13 The Committee are of the view that the power to impose fees by rules or bye-laws should expressly be given in the parent Act. In the present case therefore in order to enable the levy of grazing fee the Act ought to be suitably amended.

IV

THE WORKING JOURNALISTS WAGES BOARD RULES (S.R.O. 1769 of 1956)

14 The Working Journalists Wage Board Rules, 1956

(S.R.O. 1769 of 1956) were made by the Central Government under section 20 of the Journalists (Conditions of Service) and Miscellaneous Provisions Act, 1955.

15. Rule 15. This rule provides that no act or proceedings of the Board shall be deemed to be invalid by reason merely of any vacancy in the Board or any defect in its constitution It is a substantive provision of law whereby the jurisdiction of the court is being curtailed. Such a provision should have been made in the Act itself rather than in the Rules.

16. The Ministry of Labour to whom the matter was referred stated as under:-

> "Rule 15 can be said to fall within the ambit of Section 20(1) and Section 20(2) of the Act. This Ministry will however, take steps to incorporate the rule in the Act itself when the Act is amended."

17. The Committee note the Ministry's assurance.

18. Further, the above Rules do not mention the number of Members who will constitute the Wage Board. For the sake of certainty the rules should have laid down the strength of the Board.

19. The Ministry explained the position as under:-

> "In regard to the number of Members who may constitute the Wage Board, the Working Journalists Act has laid down only one condition, *viz.*, that an equal number of members shall be nominated to represent the employers in relation to newspaper establishments and working journalists, *vide* Section 8(2) of the Act. It is thus clear that the intention of Parliament was to vest discretion in the Central Government in regard to the actual number of members who shall constitute the Board. The Wage Board already constituted has a total of six members, three representing each party. It is possible that the Central Government may at a future date constitute

another Wage Board with an enlarged membership, if the situation then warrants such a course. This Ministry therefore, does not consider it advisable to provide in the Rules the number of Members who shall constitute the Wage Board for Working Journalists.''

20. The Committee note the Ministry's reply.

V

AMENDMENT TO THE INDIAN TELEGRAPH RULES, 1951 (S.R.O. 2182 of 1956)

21. S.R.O. 2182 of 1956 has been issued by the Central Government under Section 7 of the Indian Telegraph Act, 1885, which amends rule 272 of the Indian Telegraph Rules, 1951. Prior to its amendment, the said rule 272 provided for the refund of excess amount on the reply paid foreign telegrams if such excess amount was not less than rupee one annas eight. The S.R.O. has raised this amount to rupees three annas two.

22. The Ministry of Communications on a reference being made, gave the following reasons for the aforesaid increase in the amount.

> ''India is a party to the International Telecommunication convention, Buenos Aires, 1952. Under Article 12 of that convention it has been laid down that the provisions of the convention are completed by the Telegraph Regulations, Telephone Regulations, etc., which shall be binding on all members. Thus the Telegraph Regulations, Paris Revision, 1949, is binding on India.
>
> In Article 87, para 865 of the Telegraph Regulations, Paris Revision, 1949, it has been prescribed that in the case of a prepaid reply voucher for an amount greater than the charge for the telegraph franked by means of the voucher, the difference between the two amounts shall be refunded on condition that it is at

least equal to two (gold) francs and that application is made within four months of the date of issue of the voucher. In other words, refund is to be allowed only if the amount notified on the reply telegraph form exceeds the charge payable for the telegram sent, by at least two gold francs.''

''According to the existing rate of conversion, the value of two gold francs came to Rs. 3/2/- instead of Rs. 1/8/- prescribed in rule 272 of the Indian Telegraph Rules, 1951. It was accordingly considered necessary to amend rule 272 of the I.T.R. suitably in order to bring it in line with the provisions of the Telegraph Regulations, Paris Revision 1949, which is binding on India in so far as the procedure to be followed in the international telegraph service is concerned.''

23. The Committee consider that in view of the explanation given by the Ministry, no further action is necessary.

VI

AMENDMENT TO THE EMPLOYEES PROVIDENT FUND SCHEME, 1952 (S.R.O. 449 of 1953)

24. S.R.O. 449 of 1953 which was issued under Section 7 of the Employees' Provident Funds Act, 1952, amends para 27 of the Employees Provident Funds Scheme, 1952. It empowers the Commissioner for the Employees Provident Funds to make certain exemptions in entertaining applications from the employees for opting out of the provisions of the Scheme.

25. In respect of this S.R.O. attention of the Ministry of Labour was drawn to the Supreme Court Judgment (A.I.R. 1954 S.C. 224) which laid down that conferring of arbitrary and uncontrolled power upon the executive to make exemptions without any check was *prima facie* unreasonable.

26. A reference was also made to the Ministry for information whether submission of such details as 'sex', 'religion' and 'caste' as required in forms 1, 2, 3 and 4 annexed to the said scheme was necessary and if so for what purpose.

27. The Ministry explaining the matter stated that the Commissioner would exercise his power subject to conditions specified in the scheme and that he had not been given any arbitrary or uncontrolled power.

28. As regards the other point the Ministry stated that the details as to 'sex', 'religion' and 'caste' were required for purposes of determining the legal heir of the member of the Fund.

VII

29. The Committee note the position explained by the Ministry.

THE PREVENTION OF FOOD ADULTERATION RULES, 1955 (S.R.O. 2106 of 1955)

30. The Prevention of Food Adulteration Rules, 1955 were made by the Central Government under section 4(2) and 23(1) of the Prevention of Food Adulteration Act, 1954.

31. *Rule 4(6)*: This rule, instead of prescribing the fees payable in respect of certificates of analysis of food samples, left it to the Central Government to specify the same outside the rules. The rule therefore appeared to be not in accord with Section 4(2)(b) of the Prevention of Food Adulteration Act, 1954 which envisaged that such fees should be prescribed in the Rules.

32. The Ministry of Health on a reference made to them assured that fees payable for such certificates would be included in the rules.

33. The Committee are pleased to note that necessary amendments have since been made in the rule (Vide S.R.O. 2755 of 1956).

VIII

THE COTTON TEXTILES (PRODUCTION BY HANDLOOM) CONTROL ORDER, 1956 (S.R.O. 1077A of 1956)

34. The Cotton Textiles (Production by Handloom) Control Order, 1956 which has been made under Section 3 of the Essential Commodities Act, 1955 introduced compulsory registration of Handloom and provides for seizure of unregistered looms from the weavers.

35. The Ministry of Commerce and Industry to whom a reference was made clarified the object, effect and legality of the order as under:-

(a) The basic idea of the order has been only to collect statistical information. The order contains no provision to penalise the weavers who fail to get their looms registered. State Governments have been asked that any unauthorised loom if found, may be seized, but if the owner of the loom proves his bonafides to the satisfaction of the Registering Authority, he may be permitted to make his application on receipt of which registration certificate may be issued to him.

(b) As experience has shown, it is not possible to get any accurate figures of handlooms on voluntary basis or even through the Governmental machinery, for there is no practical method of collecting such statistics. Unless the exact number of looms is ascertained it would be difficult to calculate the quantity of yarn which will be required for consumption by the Handloom Industry and the extent to which the existing capacity for the production has to be increased.

(c) The requirement of compulsory registration does not prevent a weaver from carrying on his occupation, trade or business. It is only a reasonable restriction in the interest of the general public within the meaning of Art. 19(6) of the Constitution. The Contention about hardship to weavers who ply their looms in remote villages is not

valid because there are a large number of registering authorities under the order.

36. The Committee have considered the Ministry's reply and are of the view that the Central Government have no authority by which the State Governments can be asked to seize looms even for a short period when the weavers fail to get their looms registered.

37. The Committee recommend that the said order might be amended accordingly.

IX

THE REPRESENTATION OF THE PEOPLE (CONDUCT OF ELECTIONS AND ELECTION PETITIONS) RULES, 1956 (S.R.O. 1943 of 1956)

38. The Representation of the People (Conduct of Elections and Election Petitions) Rules, 1956 were made under the Representation of the People Act, 1951.

39. *Rule 143.*- This rule provides that the time within which any owner of premises or vehicles aggrieved by the amount of compensation determined under section 161 of the Representation of the Peoples Act, 1951 can make an application for referring the matter to arbitration, shall be 14 days from the date of determination of the amount of such compensation.

40. It was felt that to avoid hardships to the persons concerned the time limit of 14 days should be calculated not from the date of determination of the amount of compensation but from the date the owner of the premises or vehicles was given intimation of the amount of compensation.

41. The Ministry of Law on a reference being made intimated as follows:

> "Rule 143 is a reproduction of rule 123 of 1951 Rules. Since it has not caused any difficulty during the last five or six years the rule may remain as it is."

42. The Committee however recommend that the time limit for making applications for referring the matter to arbitration should be 14 days from the date the owner is given intimation of the amount determined as compensation.

X

THE LIFE INSURANCE CORPORATION RULES, 1956 (S.R.O. 1889A of 1956).

43. The Life Insurance Corporation Rules, 1956 (S.R.O. 1889A of 1956) were made under Section 48 of the Life Insurance Corporation Act, 1956.

44. *Rule 4.*- This rule provides that the resignation of the Chairman or members of the Life Insurance Corporation shall take effect from the date of its acceptance by the Central Government.

45. This provision is not in accordance with an earlier recommendation of the Committee in a similar case that some time limit should be specified in the Rules within which the authority concerned must take a decision on the letter of resignation of a member or the Chairman (Para 29 of Third Report presented to the First Lok Sabha).

46. The Ministry of Finance to whom the point was referred, replied as follows:-

> ''There will be no difficulty in allowing resignation of a Member of Life Insurance Corporation of India to come into force,
>
> (a) automatically from the date of resignation or
>
> (b) within a given period after the receipt of resignation.''

47. The Committee recommend that the rule should be amended to provide for a period of thirty days

within which the letter of resignation should be accepted.

XI

BYE-LAWS OF THE AURANGABAD CANTONMENT BOARD FOR THE REGULATION OF ERECTION OF ENCLOSURES AND TEMPORARY STRUCTURES ETC. (S.R.O. 77 of 1956 Part II, Section 4).

48. Clause 1 of the above mentioned bye-laws, provided for the levy of fees by the Cantonment Board for the erection of fence or enclosure or other such temporary structure within the limits of the Cantonment.

49. The said bye-laws were made under clause 18 of Section 282 of the Cantonments Act, 1924 which provides only for the regulation of such structures and does not authorise the levy of fees.

50. The Ministry of Defence whose attention was drawn to the point replied as under.

> "The Ministry of Law was consulted as to whether the Cantonment Boards could levy fees or taxes for erection of enclosures and/or temporary structures. They are of the opinion that the Cantonment Boards are not competent to levy such taxes. They have also advised that if it is intended to retain the clause regarding levy of fees, the Cantonments Act will have to be amended suitably.
>
> x x x x
>
> Necessary action is being taken by this Ministry to withdraw these fees/taxes wherever these have already been levied and instructions are being issued to the various Cantonment Boards to delete the clause in this respect from the Bye-laws framed by them."

51. The Committee are glad to note that the instructions to delete the clause levying the fees have since been issued by the Ministry to the various Cantonment Boards.

XII

AMENDMENTS TO THE COAL MINES CONSERVATION AND SAFETY RULES, 1954.

52. The Ministry of Production invited the views of the Committee on the following proposed amendments to the Coal Mines Conservation and Safety Rules.

(1) In rule 21, in sub-rules (2), (3) and (4) after the words 'nominated members' the words 'referred to in clause (d) of sub-rule 1' shall be inserted.

(2) the proviso to sub rule (1) to rule 53 shall be omitted.

53. The reasons given by the Ministry for the proposed amendments were that expression 'nominated member' which occurred in the existing sub-rules (2), (3) and (4) of Rule 21 was ambiguous. It was susceptible to two meanings viz., member nominated by the Board or nominated by the Coal Mining Association under clause (d) of rule 21(1). The amendment No.(1) in para 51 sought to do away with the ambiguity. The amendment No.(2) sought to omit certain restrictions placed on the power of the Coal Board to grant assistance to the owner, agent or manager of a Coal Mine.

54. The Committee have approved the two amendments proposed by the Ministry.

XIII

AMENDMENTS TO THE AMBALA CANTONMENT BYE-LAWS FOR THE REGULATION OF THE COLLECTION AND RECOVERY OF OCTROI (WITHOUT REFUND) S.R.O. 14 of 1956 (PART II SECTION 4 OF THE GAZETTE)

55. The above bye-laws have been made under Section 282(3) of the Cantonments Act, 1924.

56. *Bye-law 34A(2):* This bye-law requires a person desiring to make use of the Re-export Pass System, to desposit a security of rupees one thousand. It further provides that the Security is liable to confiscation in the event of any infringment of the bye-laws.

57. This confiscation will be in addition to rupees one hundred which a person will have to pay as fine under bye-law 35 of the said bye-laws.

58. Section 283 of the Cantonments Act, 1924 lays down that any bye-law made under the Act may provide that a contravention thereof shall be punishable with a fine which may extend to one hundred rupees.

59. Thus the said bye-law goes beyond the scope of the Statutory provision contained in Section 283 of the Act.

60. The Ministry of Defence to whom a reference was made for clarification stated as under:

> ''The bye-laws which is intended to be a check on attempts at evasion can be justified as falling within the scope of the power conferred by clause (3) of section 282 of the Cantonment Act, 1924 to *regulate* the collection and recovery of the Tax.
>
> x x x
>
> the bye-law has been inserted for the facility and at the instance of the traders affected and follows a similar provision in the Punjab Municipal Code in regard to the levy of Octroi.''

61. The Committee are of the view that Section 282(3) of the Cantonments Act, 1924 which empowers the Board to regulate the collection and recovery of taxes does not authorise the Board to impose penalty beyond the Statutory provisions laid down in Section 283 of the said Act.

62. The Committee recommend that the said bye-laws

should be amended accordingly.

XIV

AMENDMENT TO THE COAL MINES PROVIDENT FUND SCHEME (S.R.O. 509 of 1957)

63. S.R.O. 509 of 1957 amending para 7 of the Coal Mines Provident Fund Scheme which was made under the Coal Mines Provident Fund and Bonus Schemes Act, 1948 authorises the Central Government to remove any trustee from the Board of trustees, if his continuance is otherwise found undesirable, even though he may continue to represent the interests on whose behalf he was nominated.

64. A reference was made to the Ministry of Labour to state whether there was any special reason for giving such wide powers to the Government.

65. The Ministry intimated that under Employees Provident Fund Scheme a case had occurred wherein a member of the Board of Trustees, who represented the interests of employers on the Board, defaulted in payment of contributions to the fund to the extent of several lakhs of Rupees. The continuance of such a person on the Board of Trustees was considered undesirable, hence the amendment in the Coal Mines Provident Fund Scheme was made.

66. The Committee note with satisfaction the way in which the power to remove a trustee has been used by the Government so far and hope that in future it will also not be used in an arbitrary manner.

XV

THE DELHI (CONTROL OF BUILDING OPERATIONS) REGULATIONS 1955 (S.R.O. 3487 of 1955)

67. Rules 5(2)(i) and 5(3)(i) of the Delhi (Control of Building Operations) Regulations imposed certain charges on the applicants before permission for the development of land could be granted to them.

68. It was felt that such charges could not be levied as Section 19 of the Delhi (Control of Building Operations) Act, 1955, under which the said regulations were made, did not authorise for the same.

69. On a reference for clarification of the point, the Ministry of Health replied that the charges were in the nature of a fee for the amenities provided, such as, trunk sewers, water mains etc, and not a tax and that the levy of such charges was merely incidental to the power of effective control and regulation of building operations which was the object of the principal Act.

70. The matter was then referred to the Attorney General for his opinion on the following two points:

(i) whether the charges imposed under rules 5(2)(i) and 5(3)(i) of the Delhi (Control of Building Operations) Regulations were a tax or a fee.

(ii) whether under the rule making power as embodied in Section 19 of the Delhi (Control of Building Operations) Act, 1955 such charges could be levied.

71. The Attorney General held the view that it would be difficult to justify the regulations in question in so far as they provided for a charge as a condition precedent to the grant of permission for the development of land under section 6 of the Delhi (Control of Building Operations) Act. In his opinion the question whether the charges were a fee or a tax did not seem to be of much consequence as the same principle would be applicable both to a tax and a fee.

A copy of the opinion of the Attorney General is given in Appendix I.

72. The Committee have considered the said regulations in the light of the opinion given by the Attorney General and recommend that the regulations ought to be amended accordingly.

XVI

AMENDMENT TO THE INDIAN POST OFFICE RULES, 1933 (S.R.O. 499, 663-665, 735, 794. 799, 800, 874, 878 and 973 of 1957).

73. The Committee had recommended that authority giving power to make rules, regulations etc. should be specifically cited in the preamble to the Gazetted rules for the purpose of enabling all concerned to know under what precise authority the rules were made. (Para 76 of their Sixth Report presented to the First Lok Sabha)

74. The Ministry of Communications did not cite the specific section of the parent Act in the preamble to S.R.O. s 2950 and 2951 of 1956. The point was referred to the Ministry who stated that it was the practice in the past not to cite in the preamble to the notifications the sections of the parent Act however, they would do so in future.

75. The Ministry however did not cite the specific sections of the parent Act in the preamble of the S.R.O s. 499, 663, 664, 665, 735, 794, 799, 874, 878 and 973 of 1957 which were issued after the receipt of the above assurance. A reference was again made to the Ministry which furnished the relevant sections of the parent Act under which the above S.R.Os. were issued.

76. The Committee emphasize that Ministries should take steps to ensure that the specific sections of the parent Act are invariably cited in the preamble of all rules, regulations etc. for the purpose of enabling all concerned to know under what precise authority the rules have been made.

XVII

THE KHADI & VILLAGE INDUSTRIES COMMISSION RULES, 1957 (S.R.O. 1006 of 1957)

77. The Khadi and Village Industries Commission Rules, 1957, have been made under the Khadi and Village Industries Commission Act, 1957.

78. *Rule 17:* This rule originally read as follows:-

"17. Resignation.- A member of the Board other than a member of the Commission may resign his office by a letter addressed to the Government through the Chairman of the Commission provided that the member who has tendered his resignation shall not vacate his office unless his resignation is accepted and notified in the Official Gazette."

79. The rule was not in accordance with an earlier recommendation of the Committee on a similar case that some time limit should be provided within which the decision on the resignation of the member should be taken (Para 29 of their Third Report presented to the First Lok Sabha).

80. The Committee are pleased to note that the Ministry of Commerce & Industry have since amended the rule providing for a time limit within which the decision on the resignation of a member ought to be taken. (S.R.O. 2034 of 1957)

XVIII

AMENDMENTS TO THE COTTON CONTROL ORDER, 1955 (S.R.O. 1005 of 1957)

81. In Rule 14B(3) as published in S.R.O. 1005 of 1957 there was an error in citing sub-clause (3) of section 5 of the Essential Commodities Act, 1955 as there was no sub-clause (3) to section 5 of the Act.

82. The Committee are pleased to note that the Ministry of Commerce & Industry have since rectified the mistake by issuing a corrigendum. (S.R.O. 1541 of 1957)

XIX

AMENDMENT TO THE INDIAN POST OFFICE RULES, 1933 (S.R.O. 2951 of 1956).

83. S.R.O. 2951 of 1956 which was made under the

Indian Post Office Act, 1898, amended Rule 74 of the Indian Post Office Rules 1933 and sought to convert into decimal coinage the existing rates of fees chargeable for insurance of postal articles.

84. In respect of this S.R.O. two points arose *viz.* (i) specific section of the parent Act under which the S.R.O. was issued was not cited in the preamble thereof, and (ii) it was not clear how the existing fee of annas three for the insurance of postal articles would come to 20 Naya Paise, as according to conversion Table it should have come to 19 Naye Paise.

85. The Ministry of Communications to whom the above two points were referred for clarification stated as under:-

> "..... it has been the practice in the past not to cite in the preamble to the notifications (S.R.Os.) the Section of the parent Act (P.O. Act, 1898) under which any particular amendments are made inasmuch as the Indian Post Office Rules do not cite any section of the Act, under which the rules are made. However, the relevant section of the Indian P.O. Act will be mentioned in the preamble, as desired in notifications to be issued in future.
>
> As regards the amendment of rule 74 of the Indian Post Office Rules, it may be stated that the rates etc., in the Indian Post Office Rules have not merely been converted into decimal coinage according to the conversation table but these rates have been revised and refixed afresh in terms of decimal coinage, after considering the various financial and other implications involved."

86. Regarding the first point the Committee emphasise that specific section of the parent Act should invariably be cited in the preamble of all rules, regulations etc. for the purpose of enabling all concerned to know under what precise authority the rules have been made.

87. In respect of amendment to rule 74 the Committee note the Ministry's reply.

XX

THE CARBIDE OF CALCIUM RULES, 1937.

88. Rule 13 of the Carbide of Calcium Rules, 1937 made by the Central Government under the Petroleum Act, 1934, provides as follows:-

> "13. Port Commissioner's Regulations:- The landing and the removal after landing of carbide in a port shall be subject to all the regulations which may from time to time be prescribed generally or specifically in that behalf by a Port Administration provided such regulations are not inconsistent with these rules."

89. This rule sub-delegated rule-making power to subordinate authorities such as Port Commissioners. Accordingly Kandla (Carbide of Calcium) Regulations (S.R.O. 2145 of 1955) were issued by the Development Commissioner, Kandla Port.

90. Section 29 of the Petroleum Act under which the Carbide of Calcium Rules were framed did not authorise the Central Government to sub-delegate its rule-making power to Port authorities for issuing regulations. It was therefore felt that Rule 13 of the said Rules was beyond the scope of the parent Act.

91. Law Ministry had recorded on the said Rule 13 as follows:-

> "Rule 13 does not purport to confer or sub-delegate any rule-making authority to the Port Administrations. Although the word 'prescribed' has been used, the use of the word 'regulation' shows that it has not been used in the sense assigned to it by the definition in section 2(b) of the Petroleum

Act i.e. in the sense of being prescribed by *rules* made under the Act. The sole purpose of rule 13 is to make a complete code of the rules relating to landing and removal after landing of carbide prescribed under the Act by incorporating therein by reference all regulations made in exercise of independent powers by Port Administrations and there is no sub-delegation.

However, as the word 'prescribed' is apt to mislead, it is suggested that the rule may be suitably amended to avoid all misconstruction. This appears to be particularly necessary because some Port Administrations including among them the Conservator, Madras Port, have been misled into using it as the source of their power to make regulations.

x x x x

'It will have to be examined whether the rules made by the Port Administrations under rule 13 of the Carbide of Calcium Rules, 1937 can be made under some other enactments applicable to them. If not, the supplementary rules will have to be issued under the Petroleum Act by the Central Government.''

92. The Ministry of Works, Housing and Supply who are concerned with the administration of Carbide of Calcium Rules have re-issued the said regulation in draft form in accordance with sub-section 2 of Section 29 of the Petroleum Act and they have intimated that action to delete Rule 13 of the Carbide of Calcium Rules (which sought to sub-delegate legislative powers) would be taken after the finalisation of the draft regulations.

93. The Committee note the Ministry's reply.

XXI

FERTILIZER (CONTROL) ORDER, 1957. (S.R.O. 1891 of 1957)

94. The Fertiliser (Control) Order, 1957 was made under Section 3 of the Essential Commodities Act, 1955.

This order was laid on the Table of the House on the 28th May, 1957 in pursuance of sub-section (6) of the said section.

95. Clauses 2(b), 3, 4, 13 and 21 of the above order envisage the issue of subsidiary orders regarding the appointment of controller fixation of maximum and minimum prices for fertilizers, directions to manufacturers regarding packing etc.

96. The Ministry of Food and Agriculture had sought the advice of the Committee as to whether such subsidiary orders were to be deemed to have been issued under section 3 of the Essential Commodities Act and consequently were to be laid before Parliament in terms of sub-section (6) of the said section.

97. Section 3(6) of the Essential Commodities Act which provides for the laying of the order reads as under :-

> ''Every order made under this section by the Central Government or any officer or authority of the Central Government shall be laid before both Houses of Parliament, as soon as may be, after it is made.''

98. The Committee have considered the matter and are of the view that all subsidiary orders made under the Fertilizer (Control) Order are to be deemed to have been issued under Section 3 of the Essential Commodities Act and should be laid before Parliament.

XXII

BYE-LAWS FOR THE REGULATION OF STABLING OR HERDING OF ANIMALS AND LICENSING OF PREMISES FOR USE AS STABLES OR COW-HOUSES IN WILLINGTON CANTONMENT (S.R.O. 270 of 1956) - PART II SECTION 4 of the Gazette.

99. Bye-Law 6 of the above bye-laws provides that Rs.3/- shall be charged as a license fee by the Cantonment Board from every licensee for the herding of

and stabling of animals.

100. Clause (11) of Section 282 of the Cantonments Act, 1924 under which these bye-laws were framed provided only for the regulation or prohibition of the stabling or herding of animals. It did not authorise the Government to charge license fees.

101. The Committee have already recommended in an earlier case that to enable imposition of any fees by rule or bye-law the power should be expressly given in the parent Act. (vide para 13 above). In the present case also to enable the Cantonment Boards to charge license fee for the herding and stabling of animals the parent Act ought to be suitably amended.

XXIII

THE AGRICULTURAL PRODUCE (DEVELOPMENT AND WAREHOUSING) CORPORATIONS RULES, 1956 (S.R.O. 2408 of 1956)

102. *Rules 6 and 13.*- These Rules were made under the Agricultural Produce (Development and Warehousing) Corporations Act, 1956. They provide that a non-official member of National Co-operative Development and Warehousing Board, may resign his office but such resignation shall be effective from the date on which it is accepted. There was nothing in the rules to direct the authority concerned to accept the resignation in a reasonable time.

103. In similar cases the Committee had observed that there should be no such limitation on a member when he wanted to resign and that some time limit should be specified within which the authority concerned must take a decision on the letter of resignation of a member.

104. The Ministry of Food and Agriculture stated that there could be no difficulty in specifying a time limit of one month during which a decision on

the resignation should be taken.

105. The Committee recommend that the Ministry should amend Rules 6 and 13 accordingly.

106. *Rule 10(iv).*- This Rule, empowers the Central Government to terminate the services of the Secretary appointed under Rule 10(ii) of the Rules at any time by giving three months notice without giving any reasons therefor.

107. The above rule seemed to give unusual power to the Central Government to remove the Secretary without assigning any reason or giving any opportunity of being heard.

108. The Ministry of Food and Agriculture to whom a reference was made stated as under :-

> ''xxx Rule 10(iv) relating to the termination of the services of the Secretary, Article 311 of the Constitution would not apply when the Secretary is not a Central Government Servant. It is permissible to the Corporation, like a private employer, to terminate the services of its employees upon a reasonable notice or where there is an agreement as to the period of notice, upon a notice for that period. Three months is considered reasonable notice. The fact that the power is exercised by the Central Government instead of the Corporation makes no difference. As a good employer the Board would ordinarily give the Secretary an opportunity to represent his case. xxx.''

109. The Committee consider that in view of the fact that the services of the Secretary of the Corporation do not come within the provisions of Art. 311 of the Constitution the explanation given by the Ministry is satisfactory and no further action is necessary.

110. *Rule 32(3).*- This Rule empowers the National Cosporative Development and Warehousing Board to determine the Status of an institution whether it is qualified to be a shareholder of the corporation or not and provides that such decision of the Board shall be final.

111. The exercise of such power appeared to oust the jurisdictio. of the courts to determine a fact which was judicial in nature. The Parent Act [Agricultural Produce (Development and Warehousing) Corporations Act, 1956] did not contain any authorisation in this behalf. Further the rule might cause hardship to the party affected as there was no provision for giving an opportunity of being heard or a right to appeal against the decisions of the Board.

112. In this connection the Ministry of Food and Agriculture stated as under :-

> "... this sub-rule merely empowers the Board to rectify an error in allotment of shares which may have been committed due to inadvertent acceptance of a subscriber's claim to be qualified for allotment of shares. Such a provision is necessary to carry out the purposes of the Act and is, therefore, within the scope of the rule-making authority conferred by Section 52(1). Section 18 having provided for subscription to the capital by only specified categories of persons, the issue of shares to anyone falling outside those categories would be contrary to the provisions of the Act. A provision for rectification of such an error cannot be regarded as beyond the scope of the Act and as such outside the rule-making power. The rule relates to matter arising under the provisions of the Act and is valid.
>
> The action of the Board cannot properly be regarded as judicial since the Board is not

an administrative agency or a body of persons charged with the function of determing the rights of parties brought or coming before it for adjudication. In acting under Rules 32(3), the Board would merely be exercising powers of control over the affairs of the Warehousing Corporation. Its order could not have any finality or binding force so as to take away the right to legal remedies available under the ordinary law. The affected party will be entitled to maintain a suit for a declaration that it was entitled to the allotment of the shares and for consequential relief flowing out of such declaration of its proprietory right. It does not appear therefore to be necessary to provide for affording an opportunity to be heard and give a right of appeal.''

113. The Committee feel that the decision of the Board should be subject to adjudication by a court of law and recommend that the ambiguity created by the use of word 'final' in regard to the decision of the Board should be corrected.

XXIV

AMENDMENT TO THE CENTRAL OPIUM RULES, 1934 (S.R.O. 1436 of 1957)

114. S.R.O. 1436 of 1957 amends the second proviso to rule 4 of the Central Opium Rules, 1934 which reads as follows:-

> *Rule 4.*- Within the areas in the Punjab specified in rule 2 the poppy shall not be cultivated save under and in accordance with the conditions of a licence granted by an Excise Officer of the 1st Class of the district in the district in the annexed form of licence.''

x x x x x

> ''Provided further that any person who cultivates poppy without previously obtaining a licence may be granted a licence by the licence granting authority with retrospective effect, on payment forthwith of penalty at the rate fixed from time to time by the State Government, in addition to the duty due. Such penalty shall not be refunded. The patwari shall maintain a record of poppy cultivation in a register in the annexed form.''

115. Section 5(2) of the Dangerous Drugs Act, 1930 under which the said S.R.O. was made reads as under :-

> ''The Central Government may make rules permitting and regulating the cultivation of the poppy (Papaver Somniferum L.) and the manufacture of opium, and such rules may prescribe the form and conditions of licences for such cultivation and manufacture, the authorities by which such licences may be granted, the fees that may be charged therefor, and any other requisite to render effective the control of the Central Government over such cultivation and manufacture.''

116. The above Section did not appear to confer power on the Government to compound an offence and to impose a penalty for contravention of the provisions of the Act or the rules made thereunder. It was therefore, felt that the said proviso was beyond the rule-making power of the Government.

117. The Ministry of Law held the view that since there was no absolute prohibition of cultivation of poppy it would be in order if the rules provide for the circumstances in which cultivation could be started even though licence had not been obtained. The Ministry of Finance intimated that the penal provision was made as a measure to render effective the control of Government over poppy cultivation in accordance with Section 5(2) of the Dangerous Drugs Act, 1930.

118. The Committee consider that since there is no absolute prohibition for cultivation of poppy the explanation given by the Ministry is satisfactory and the matter need not be pursued further.

XXV

ALL INDIA SERVICES (OVERSEAS PAY, PASSAGES AND LEAVE SALARY) RULES, 1957 (S.R.O. 526 of 1957).

119. The All India Services (Overseas Pay, Passages and Leave Salary) Rules, 1957 were published on the 15th February, 1957, but were given retrospective effect from the 12th July, 1956 by rule 1(3) which reads as follows :-

> "(3) They shall be deemed to have come into force on the twelfth day of July, 1956."

120. These rules were made under the All India Services Act, 1951 which does not expressly empower the Government to give retrospective effect to the rules made thereunder.

121. The Ministry of Home Affairs stated as under :-

> "xxx the Government have generally been acting on the view that rules framed or notifications issued under an Act of Legislature cannot be given retrospective effect unless the Act expressly conferred power to frame rules or issue notifications with retrospective effect. The Supreme Court however, has indicated that the reason why the retrospective operation of laws is disfavoured is that it may prejudicially affect vested rights and upheld a notification bringing an Act of Legislature into force with retrospective effect on the ground that the circumstances of the case did not effect the principle disfavouring the retrospective operation of a statute as there was no question of

affecting vested rights in the case. (Musaliar *vs.* M.V. Pooti 1956 SCA 259 at 279). In another case, Mohammad Ghouse *vs.* the State of Andhra (Unreported: Civil appeal No.133 of 1956) decided on 29.11.56, the Supreme Court proceeded on the basis that certain service rules giving retrospective effect were not objectionable.

As regards the present notification the position is that the officers concerned were given intimation of the decisions incorporated in the All India Services (Overseas Pay, Passages and Leave Salary) Rules, 1957 by a memorandum dated the 12th July, 1956 and it was, therefore, that the said Rules were given effect to from that date. In view of the aforesaid Supreme Court rulings the retrospective operation of the Rules could possibly be justified in view.

122. The Committee are of the view that since the officers affected by the Rules had been given advance intimation of the provision of the Rules on the 12th July, 1956, the date from which the rules were given retrospective effect, those officers would not have been prejudicially affected by the retrospective effect of the rules. The Committee however recommend that retrospective effect to any provision should not be given by the Rules unless the Act expressly conferred such powers.

XXVI

THE CUSTOMS DUTIES DRAWBACK (POTASSIUM CITRATE) RULES, 1957 (S.R.O.2249 of 1957)

123. S.R.O. 2249 of 1957 containing the Customs Duties Drawback (Potassium Citrate) Rules, 1957 were published on 6th July, 1957 but were brought into force with effect from 1st July, 1957.

Section 43-B of the Sea Customs Act, 1878 under which the rules have been made does not authorise the Government to give retrospective effect to the rules made thereunder.

124. As the parties concerned were not adversely affected by the retroaction of the rules the Committee feel that no further action is necessary.

125. The Committee however emphasise that retrospective effect should not be given to the rules unless the Act expressly conferred such powers.

XXVII

BYE-LAWS OF THE SECUNDRABAD CANTONMENT BOARD (S.R.O. 154 of 1957, - Part II-Section 4 of the Gazette)

126. Clause 8 of the 'Bye-Laws for the control and supervision of places where sale of fire-works is carried on within the limits of Secundrabad Cantonment' requires that the licensee shall deposit a ground rent of Rs.5/- at the time of applying for the licence to carry on the business of fireworks.

127. It was felt that the provision for the levy of ground rent was beyond the bye-law-making power of the Cantonment Board as Section 282(17) of the Cantonments Act, 1924 under which the said bye-laws were made, did not authorise the Board to levy such a charge.

128. The Ministry of Defence to whom the point was referred, had intimated that necessary action would be taken to omit the clause in question.

129. The Committee note the Ministry's assurance.

XXVIII

THE CALCUTTA DOCK WORKERS (REGULATION OF EMPLOYMENT) SCHEME, 1956 (S.R.O. 2315 of 1956).

130. The Committee have examined the Calcutta Dock

Workers (Regulation of Employment) Scheme, 1956 made under the Dock Workers (Regulation of Employment) Act, 1956.

Clause 15(1)(d):

131. Clause 15(1)(d) of the above scheme provides that a registration fee of Rs.500/- shall be payable by certain category of stevedores or stevedoring firms. Section 3(2)(c) of the parent Act provides for levying of registration fee in respect of Dock Workers only and not Stevedores. It was therefore felt that in the absence of any specific authorisation the levy of registration fee of Rs.500/- in respect of Stevedores was beyond the rule-making power of the Government.

132. The Ministry of Law to whom the point was referred stated as under:

> ''Registration of employers may be regarded as incidental or supplementary to the scheme of registration of workers and the application of the scheme to the employers.'' [Sec. 3(2)(k) of the parent Act lays down that a scheme may provide for any other incidental or supplementary matters] ''Guaranteeing minimum pay to workers during periods of unemployment involves extra cost and has to be met from contributions made by employers. The fee for registration of employers serves not merely as payment towards expenses connected with registration but also the employers' contribution to the cost of operating the scheme.''

133. The Committee recommend that levy of registration fee on the Stevedores (employers) should be provided in the Act itself.

Clause 15(1)(e):

134. Second Proviso to clause 15(1)(e) of the Calcutta Dock Workers (Regulation of Employment) Scheme, 1956 discretionary power to the Dock Labour

Board to dissolve the group of registered employers formed under the scheme, if it is satisfied that the employers have failed to comply with the conditions prescribed for the formation of such groups.

135. It was felt that the dissolution of a group might affect the employers financially and as there was no right of appeal against the orders of the Board an opportunity of being heard should have been given to the aggrieved employers.

136. The Munistry of Labour stated as under:-

> 'Clause 15(1)(e) of the Scheme provides for a group of employers being treated as one employer in respect of employment of monthly workers under them. This provision was incorporated on the recommendations of the Dock Workers Enquiry Committee contained in paragraph 825 of its report. It was however considered necessary to ensure that this provision was not abused by the employers by exploiting the monthly gangs and with this object in view the second proviso to clause 15(1)(e) was inserted.
>
> The power to dissolve a group of employers is vested in the Dock Labour Board, which includes representatives of employers. The employers will have therefore, ample opportunity to put their view before the Board when a proposal for the dissolution of a group of employers considered by it. It is therefore, not necessary to provide for a group of employers concerned being heard before action is taken under clause 15(1)(e).'

137. The Committee feel that the dissolution of a group may affect the employers financially and as there is no right of appeal against the orders of the Board an opportunity of being heard should be given to the aggrieved employers. The Committee recommend that the rules should be amended accordingly.

XXIX

NON-CITATION OF THE SHORT TITLES OF THE RULES IN THE 'ORDERS'

138. The Committee have in para 44 of their Third Report (presented to the first Lok Sabha) already recommended that all 'orders' should bear short title in order that they may be referred to conveniently, located easily and understood by the public. In the following cases the 'Orders' did not bear any short title:-

S.No.	No. of Order	Part of the Gazette in which published	Date of publication	Name of Ministry.
1.	S.R.O 9 of '57	Part II Sec.4	12.1.57.	Ministry of Defence
2.	S.R.O. 1713 of '57.	Part II Sec.3	25.5.57	Ministry of Labour & Employment.
3.	S.R.O. 1714 of '57.	-do-	-do-	-do-
4.	S.R.O 1715 of '57.	-do	-do-	-do-
5.	S.R.O. 1716 of '57.	-do-	-do-	-do-
6.	S.R.O. 1717 of '57.	-do-	-do-	-do-
7.	S.R.O. 376 of 57.	-do-	2.2.57	Ministry of Transport and Communications.
8.	S.R.O. 1325 of '57.	-do-	4.5.57	-do-
9.	S.R.O. 1400 of '57.	-do-	-do-	Ministry of W.H. & S.
10.	S.R.O. 431 of '57.	-do-	9.2.57	Ministry of Railways.

139. The Committee consider that it is essential that all rules should bear short titles so that they may be referred conveniently, located easily and understood by the public.

XXX

DELAY IN LAYING OF 'ORDERS' ON THE TABLE.

140. The Committee had in their earlier reports (presented to the First Lok Sabha) recommended that all rules required to be laid should be laid within a period of seven days after their publication in the Gazette if the House was then in session; if it was not then in session, the Ministries should

ensure that the 'orders' were laid on the Table as soon as possible (but within seven days) after commencement of the following session.

141. The Committee are glad to note that there is much improvement with regard to the laying of rules on the Table of the House. However they find that in many cases this recommendation has not been complied with. A statement of such cases is given in the Appendix II.

142. The Committee hope that the Government would in future strictly follow the recommendation and lay rules on the Table of the House within the period specified therein.

143. The Committee further recommend that whenever rules are laid on the Table of the House after a period of seven days they should be accompanied by a statement explaining the reasons for the delay.

XXXI

RULES RELATING TO STATUTORY BODIES ON WHICH LOK SABHA IS PARTIALLY REPRESENTED.

144. Parliament is represented on various statutory bodies and the rules relating to their working are framed by the Central Government in pursuance of powers given by the relevant Acts.

145. The Committee have noticed that the rules do not contain clear, specific and uniform provision relating to the mode of appointment, and term of office of the representatives of Parliament on such bodies. In many cases the proportion of the representatives of the Lok Sabha and Rajya Sabha is not in the ration of 2:1 as recommended by the Committee earlier in para 27 of their Third Report presented to the First Lok Sabha.

146. In this respect the Committee have examined the rules relating to the following statutory bodies:

(1) The Employees State Insurance Corporation constituted under Section 3 of the Employees State Insurance Act, 1948.

147. There is no provision in the State Employees Insurance Act, 1948 or the Rules made thereunder that if a member representing Lok Sabha on the Employees State Insurance Corporation ceases to be a member of the House, he should cease to be a member thereof.

148. The Ministry of Labour replied as under:

> 'The question whether members of Parliament cease to be members of the Corporation under the Employee's State Insurance Act, 1948, if the Parliament is dissolved or its term expires or the members cease to be members of Parliament, was examined in 1952 after the 1st General Elections. The Ministry of Law advised that the persons concerned continued to be members of the Corporation irrespective of the fact that they ceased to be members of the Parliament.'

149. The other point that was referred to the Ministry was on the Corporation, which consists of about 38 members, only Parliament is represented by two members, one from Lok Sabha and one from Rajya Sabha. The representation of the two Houses on the Corporation is not in the ratio of 2:1 as recommended by the Committee earlier.

150. The Ministry of Labour replied as under:

> 'As regards the ratio between the members of the Lok Sabha and the Rajya Sabha who may be elected members of the Corporation, the Department of Parliamentary Affairs have advised that when the number members on a Statutory Committee was less than 3, representation should be given to the Lok Sabha when it was one, and one to each House when it was two.'

151. The Committee have considered the Ministry's reply to the above two points. The Committee recommend that the Act should be suitably amended to provide (i) that a representative of the Lok Sabha should cease to be a member of the Corporation on his ceasing to be a member of the Lok Sabha and (ii) that Parliament should be represented by three members on the Corporation, two from Lok Sabha and one from Rajya Sabha.

(2) The Coffee Board constituted under Section 4 of the Coffee Act, 1942.

152. There was no provision in the Coffee Act, 1942 or the rules made thereunder that a representative of Lok Sabha on the Coffee Board should cease to be member thereof if he ceased to be a nember of the Lok Sabha.

It was felt that such a provision was necessary to remove any ambiguity.

153. The Committee are pleased to note that the Ministry of Commerce and Industry have since amended the Coffee Rules suitably. (Vide S.R.O. 2221 of 1957).

(3) The Rubber Board constituted under Section 4 of the Rubber Act, 1947.

154. There was no provision in the Rubber Act, 1947 or the rules made thereunder that if a member representing Lok Sabha on the Rubber Board ceased to be member of Lok Sabha, he should cease to be a member thereof.

It was felt that such a provision was necessary to remove any ambiguity.

155. The Committee are pleased to note that the Ministry of Commerce and Industry to whom the matter had been referred have since amended the rules suitably. (Vide S.R.O. 2220 of 1957).

(4) The Samsad (Court of Visva-Bharati) constituted under Sections 18 and 19 of the Visva-Bharati Act, 1951.

156. There is no specific provision in the First Statutes of the University (Visva-Bharati) that a repre-

sentative of Lok Sabha on the Samsad (Court) should cease to be member thereof, if he ceases to be a member of the Lok Sabha.

157. Clause 11(12) of the said statutes governing the termination of membership of the Samsad reads as follows:

> ''No member elected, nominated or appointed to the Samsad (Court) in his capacity as a member of a particular body or as the holder of a particular post shall hold office for a period longer than three months after he ceases to hold that post, unless in the meantime he again becomes a member of that body or is re-appointed to that post.''

158. The effect of the above clause appears to be that members of the Lok Sabha on the Samsad will continue to represent the Lok Sabha even after dissolution of the Lok Sabha which elected them, if they are again elected to the Lok Sabha within three months, without their being re-elected by the new Lok Sabha to serve on the Samsad.

159. The Ministry of Education replied as under:

> ''The Ministry of Law who have been consulted in the matter have confirmed that interpretation (as referred to in para..... above). That Ministry have also observed that if it was intended that members of old Lok Sabha on the Samsad (Court) should not continue to be members of the Samsad after the dissolution of the Lok Sabha and that the new Lok Sabha should elect its own representatives on the Samsad, it would be necessary to amend the Statutes suitably.''

160. The other point that was referred to the Ministry was that on the Samsad, which consists of about 45 members,

Parliament is represented by two members, one from Lok Sabha and one from Rajya Sabha. The representation of the two Houses is not in the ratio of 2.1 as recommended by the Committee earlier.

161. The Ministry of Education stated as under:

> ..... an amendment of clause (5) of Statute 10 of the First Statutes of Visva Bharati would be necessary in order to give effect to the recommendations of the Committee on Subordinate Legislation. Till such amendment is made the present provision on the Statutes will remain in force.

The Committee have considered the Ministry's reply to the above points. The Committee recommend that statutes of the University should be suitably amended to provide (i) that a representative of the Lok Sabha should cease to be a member of the Samsad on his ceasing to be a member of the Lok Sabha and (ii) that Parliament should be represented by three members on the Samsad, two from Lok Sabha and one from Rajya Sabha.

(5) The Rajghat Samadhi Committee constituted under Section 3 of the Rajghat Samadhi Act, 1951.

163. The term of office of representative of Lok Sabha on the Rajgat Samadhi Committee has not been laid down specifically in the Act or the Rules made thereunder. It has also not been provided that a representative of Lok Sabha on the said Committee should cease to be a member thereof, if he ceases to be a member of Lok Sabha.

164 The Ministry of Works, Housing and Supply stated as under

> It would not be possible to make any specific

provisions in Rajghat Samadhi Rules, 1952 regarding the tenure of Members of Parliament on the Rajghat Samadhi Committee without appropriately amending the Rajghat Samadhi Act, 1951. Now that the two members of the Parliament on the Rajghat Samadhi Committee have been returned to the New Parliament. the Committee may like to consider whether provisions for tenure of the members of Parliament on the Rajghat Samadhi Committee which would involve amendment to the Rajghat Samadhi Act, 1951 itself is at all necessary just at present.''

165. The Committee recommend that the Rajghat Samadhi Act should be amended to provide for specific term of office for M.Ps. on the Rajghat Samadhi Committee, with the proviso that they should cease to be members of that Committee on ceasing to be members of Lok Sabha.

(6) The Coir Board constituted under Section 4 of the Coir Industry Act, 1953.

166. There is no specific provision in the Coir Industry Act, 1953 or the Rules made thereunder that a representative of Lok Sabha on the Coir Board should cease to be a member thereof if he ceases to be a member of the Lok Sabha.

167. The Ministry of Commerce and Industry stated as under:-

''The Ministry of Law are being consulted in the matter. The Government's intention is that when a member ceases to be a representative of his category he should cease to be a member of the Board. The existing rules, however, do not ensure this intention. The question of amending sub-rule 3 of Rule 4 of the Coir Industry Rules, 1954 is being taken up.''

168. Secondly it was pointed out to the Ministry that

the members representing Lok Sabha on the Coir Board are elected by the Hiuse, but there is no mention in the Coir Industry Rules, 1954, that they should be so elected.

169. Thirdly it was brought to the notice of the Ministry that on the Board, which consists of about forty members, Parliament is represented by two members only, one from Lok Sabha and one from Rajya Sabha. The representation of the two Houses is not in the ratio of 2:1 as recommended by the Committee earlier.

170. The Ministry of Commerce and Industry stated as under:

> "This matter will be considered while reconstituting the Coir Board for the second term which falls due on the 16th July, 1957."

171. The Committee have considered the replies of the Ministry to the above three points. The Committee recommend that the Coir Industry Rules should be amended suitably to provide -

(i) that Representative of the Lok Sabha should cease to be a member of the Coir Board on his ceasing to be a member of the Lok Sabha;

(ii) that Representatives of Lok Sabha on the Coir Board should be elected by the House; and

(iii) that Parliament should be represented by three members on the Board, two from Lok Sabha and one from Rajya Sabha.

HUKAM SINGH,
CHAIRMAN,
COMMITTEE ON SUBORDINATE LEGISLATION.

NEW DELHI,
The 11th September, 1957.

SUMMARY OF RECOMMENDATIONS MADE IN THE FIRST REPORT OF THE COMMITTEE ON SUBORDINATE LEGISLATION
(Second Lok Sabha)

Sl. No. (1)	Reference to para No. in the Report. (2)	Summary of Recommendations (3)
1.	13	The power to impose fees by rules or bye-laws should expressly be given in the parent Act. In order to enable the levy of grazing fee by the Nasirabad Cantonment Board the Cantonments Act, 1924 ought to be suitably amended.
2.	37	The Cotton Textiles (Production by Handloom) Control Order (S.R.O. 1077A of 1956) should be suitably amended to omit the provision regarding seizure of unregistered looms from the weavers.
3.	42	In rule 143 of the Representation of the People (Conduct of elections and election petitions) Rules, 1956 the time limit within which any owner of premises or vehicles aggrieved by the amount of compensation determined under section 161 of the said rules can make an application for referring the matter to arbitration should be 14 days from the date the owner is given intimation of the amount determined as compensation.
4.	47	Rule 4 of the Life Insurance Corporation Rules, 1956 should be amended to provide that resignation of the Chairman or members of the Life Insurance Corporation should be accepted within a period of 30 days of the receipt of the letter of resignation.

(1)	(2)	(3)
5.	62	Government should not provide by Rules imposition of penalty beyond the statutory provisions contained in Section 283 of the Cantonments Act, 1924. Accordingly Bye-law 34A(2) of the Ambala Cantonment Bye-laws for the Regulation of the collection and recovery of Octroi (without refund), should be suitably amended.
6.	72	Delhi (Control of Building Operations) Regulations, 1955 should be suitably amended so as to omit regulations 5(2)(i) and 5(3)(i) providing for imposition of certain charges on the applicants before permission for the development of land could be granted to them because the parent Act does not authorise for the same.
	76 & 86	Specific section of the parent Act should invariably be cited in the preamble of all rules, regulations etc. for the purpose of enabling all concerned to know under what precise authority the rules have been made.
	98	All subsidiary orders made under the Fertilizer Control Order are to be deemed to have been issued under the parent Act and they should be laid before Parliament.
	101	To enable the Willington Cantonment Board to charge licence fee for the herding and stabling of animals the Cantonment Board Act, 1924 should be suitably amended.
	105	Rules 6 and 13 of the Agricultural Produce (Development and Warehousing) Corporation Rules, 1956 should be suitably amended to specify a limit of one month during which decision

(1)	(2)	(3)
		on the letter of resignation of a member should be taken.
11.	113	The decision of the National Cooperative Development and Warehousing Board under rule 32(3) of the Agricultural Produce (Development and Warehousing) Corporation Rules, 1956 should be subject to adjudication by a court of law. The ambiguity created by the use of word 'Final' in the Rule should be corrected.
12.	122 & 125	Retrospective effect to any provision should not be given by the Rules unless the Act expressly conferred such powers.
13.	133	The provision for levy of registration fee on the Stevedores (employers) made in the Calcutta Dock Workers (Regulation of Employment) Scheme, 1956 should be made in Dock Workers (Regulation of Employment) Act, 1956.
14.	137	Second Proviso to clause 15(1)(e) of the Calcutta Dock Workers (Regulation of Employment) Scheme, 1956 should be amended to provide that the aggrieved employees are given an opportunity of being heard as there is no right of appeal against the orders of the Dock Labour Board.
15.	139	All rules should bear short titles so that they may be referred conveniently, located easily and understood by the public.
16.	142	Government should lay rules on the Table of the House within a period of seven days after their publication in the Gazette, if the House is then in session; if it is not in

(1)	(2)	(3)
		session, the 'orders' should be laid within seven days of the commencement of the following session.)
	143	Whenever rules are laid on the Table of the House after a period of seven days they should be accompanied by a statement explaining the reasons for the delay.)
17.	151	The Employees State Insurance Act, 1948 should be suitably amended to provide (i) that a representative of the Lok Sabha should cease to be a member of the Corporation on his ceasing to be a member of the Lok Sabha (ii) that Parliament should be represented by three membersон the Corporation, two from Lok Sabha and one from Rajya Sabha.
18.	162	The Committee recommend that First Statutes of the University (Visva-Bharati) should be suitably amended to provide (i) that a representative o the Lok Sabha should cease to be a member of the Samsad on his ceasing to be a member of the Lok Sabha and (ii) that Parliament should be represented by three members on the Samsad, two from Lok Sabha and one from Rajya Sabha.
19.	165	The Rajghat Samadhi Act should be amended to provide for specific term of office for M.Ps on the Rajghat Samadhi Committee, with the proviso that they should cease to be members of that Committee on ceasing to be members of Lok Sabha.
0.	171	The Coir Industry Rules should be amended suitably to provide:-
		(i) that a Representative of the Lok Sabha should cease to be a member of the Coir Board on his ceasing to be a member of the Lok Sabha;

(1)	(2)	(3)
		(ii) that Representatives of Lok Sabha on the Coir Bored should be elected by the House; and
		(iii) that Parliament should be represented by three members on the Board, two from Lok Sabha and one from Rajya Sabha.

APPENDICES TO THE REPORT

APPENDIX I

(See para 71)

Opinion of the Attorney-General of India (Shri M.C. Setalvad)

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1. The more important question is whether the charges sought to be imposed can be levied under the rule-making power contained in section 19 of the Delhi (Control of Building Operations) Act 1955 in the absence of a provision in the Act empowering the levy of such charges.

2. The rule-making power is contained in section 19 of the Act. It empowers the authority generally to make regulations to carry out the purposes of the Act. Without prejudice to the generality of that power, the section in sub-clause (2) specified certain specific matters in respect of which rules may be made. It is to be noticed, however, that the section does not either expressly or by necessary implication give power to frame a regulation levying fees or charges for granting the permission under section 6 of the Act. The question, therefore, arises whether an imposition like a tax or a fee can be imposed by a rule or regulation when the Act under which it is made does not expressly or by necessary implication confer a power to make the imposition.

3. The generally accepted view would seem to be that a rule providing for the levy of a fee or other financial burden cannot be made without an express power given in that behalf by the Act itself. On this view the Imports and Exports (Control) Act 1947 was amended in 1950 by the insertion of section 4A which expressly gives power to the Central Government by order to levy a fee in respect of applications made or licences issued under the Act. A similar provision is to be found in section 5 of the Salt Cess Act 1953 (Act 49 of 1953). However, recently there has been a decision of the Patna High Court in Ramlakshman V. the Election Commission, 7 E.L.R. 364 which supports the validity of a regulation like the one under consideration.

4. The position in the United Kingdom on this subject seems to be quite clear. The decisions of the Court of Appeal and the House of Lords in the case of Attorney General v. Wilts United Dairies (37 T.L.R. 884 and 91 L.J. K.B. 897) go to show that in that country no peculiary can be imposed upon the subject whatever the name of the burden burden except under the clear and distinct authority of Parliament. In that case a charge of 2 d. per gallon of milk was prescribed by the Food Controller as a condition of the grant of a licence to trade in milk. That decision was followed in Brocklebank Ltd. v. the King (1926 I K.B. 52) where the demand of a sum of money as a condition for the grant of a stuatutory permission to sell a ship was held to be illegal.

5. It has been suggested that as the charge prescribed by the regulation is not a tax but a fee for the amenities provided such as trunk sewers, water mains, etc. and that as it is merely incidental to the regulation of building operations and a condition of the grant of the permission under section 6 it would be valid. I do not agree. A similar contention was negatived by the Privy Council in City of Halifax v Nova Scotia Car Wors Ltd., A.C. 992 The Privy Council observed (pages 997-998) as follows:

> 'In a sense it is true that the charge resembles the price of benefits conferred if not of work and labour done *** all rates and taxes are supposed to be expended for the benefit of those who pay them, and some really are so, but the essence of taxation is that it is imposed by superior authority without the tax-payer's consent except in so far as representative Government operates by the consent of the Government. Compulsion is an essential feature of the charge in question. The respondents might have drained their factory for themselves; they might think that it needed no drainage; they might object to the municipal scheme as defective; but the city sewers would be laid and the respondents would have to pay just the same. There is not enough here to differentiate this charge from taxation.'

6. The view taken above in England appears to me to be correct in principle. This view has been adopted by the

Madras High Court in a case reported in 1942 Mad. 73 at 76 Ayyar & Co. v. Srinivasulu. The judgment puts the principle as follows: "It is a general principle that any provision by which a member of the public may be taxed should be clearly stated; so should, in my view, an analogous provision by which any payment can be compelled from them.

7. As against the above view we have the decision of the Patna High Court mentioned above. The learned Judge in the Patna case has refused to follow the decision of the House of Lords in the case of Wilts United Dairies Ltd. referred to above on the ground that that decision was influenced by historical considerations. The learned Judge has relied on certain decisions of the American Supreme Court. It appears to me that the U.S. decisions based on the Constitutional provisions of that country would not be a safe guide to follow in the interpretation of our legislation and the rule-making powers under it. Indeed our Constitution provides in article 265 that no tax shall be levied or collected except by authority of law. 'Taxation' is defined in article 366(28). I think that the view taken by the English courts and by the Madras High Court is the better view.

8. I am of the view, therefore, that it would be difficult to justify the regulations in questions in so far as they provide for a charge as a condition precedent to the grant of permission under section 6 of the Act.

9. As to the first question, whether the charge is a tax or a fee, the point does not seem to be of much consequence because the same principle will apply. As pointed out in the City of Halifax case referred to above, even if it be regarded as a fee it will be financial burden which cannot be imposed except under a specific provision contained in a law.

New Delhi,
The 4th May, 1957.

Sd/- M. C. Setalvad,
Attorney-General of India.

(No. AGF-(31)/57-4647/12)

(See para 141)

STATEMENT OF 'ORDERS' IN RESPECT OF WHICH THERE HAS BEEN DELAY IN LAYING ON THE TABLE

Serial No.	No. of 'Order'	Description of 'Order'	Date of Publication in Gazette	Date of laying on the Table	Period which elapsed between the two dates	Name of the Ministry concerned	Remarks
1	2	3	4	5	6	7	8
1.	S.R.O.2055 of 1957	Amendments in the Indian Aircraft Rules, 1937.	15.9.56	27.11.56	13 days	Transport and Communications	
2.	S.R.O. 662 of 1957	-do-	2.3.57	17 5.57	2 months		
3.	S.R.O. 1808 of 1957	-do-	1.6.57	6.8.57	21 days		The inter session periods have not been counted for delay in the case of these orders which were published when the House was not in session & were laid on the Table during the session immediately following their publication in the Gazette.
4.	S.R.O. 2785 of 1956	Amendments in the Cinematograph (Censorship) Rules, 1951.	24.11.56	18.3.57	4 months	Information & Broadcasting.	
5.	S.R.O. 1971 of 1957	Amendments in Registration of Newspapers (Control) Rules, 1956.	15 6 57	9.8.57	24 days		
6.	S.R.O. 1885 of 1956	Amendments in the Cotton Textiles (Production by Handloom) Control Order, 1956.	23.8 56	19 3 57	7 months	Commerce & Industry.	

1	2	3	4	5	6	7	8
7.	S.R.O. 2403 of 1956	Amendments in the Cotton Textiles (Control) Order, 1948.	27.10.56	19.3.57	4 months	Commerce & Industry.	
8.	S.R.O. 908 of 1957	Amendments in the Cotton Textiles (Production by Handloom) Control Order, 1956.	23.3.57	23.5.57	2 months	Ministry of Commerce & Industry.	
9.	S.R.O. 891 of 1957	Medicinal and Tiolet preparations (Excise Duties) Rules, 1956.	-do-	16.5.57	1 months & 20 days.	Ministry of Finance	8
10.	S.R.O. 1040A of 1957	Amendments in Central Excise Rules, 1944.	6.4.57	20.5.57	10 days		
11.	S.R.O. 1040B of 1957	-do-	-do-	-do-	-do-	Ministry of Finance	
12.	S.R.O. 1591 of 1957	-do-	16.5.57	15.7.57	2 months		
13.	S.R.O. 1300 of 1957	Amendments in the Customs Duties Drawback (Cigarette) Rules, 1955.	27.4.57	24.5.57	13 days		

1	2	3	4	5	6	7	8
14.	S.R.O. 1299 of 1957	Customs Duties Drawback (Pipe Cigarette tobacco) Rules, 1957.	27-4-57	27.5.57	16 days	Ministry of Finance.	
15.	S.R.O 1379 of 1957	Customs Duties Drawback (dye-stuffs) Rules, 1957.	4-5-57	30.5.57	20 days		
16.	S.R.O. 1582 of 1957	Customs Duties Drawback (Copper dusting preparations) Rules, 1957.	18.5.57	17.7.57	2 months		
17.	S.R.O. 2935B of 1956	Amendments in Schedule III to the I.P.S.(Pay) Rules, 1954.	24.11 56	20.5.57	6 months	Ministry of Home Affairs	
18.	S.R.O. 275 of 1957	Amendments to the All-India Services (Provident Fund) Rules, 1955.	26.1.57	20.5.57	4 months		
19.	S.R.O. 348 of 1957	Amendments to the All India Services (Leave) Rules, 1955.	2.2.57	20.5.57	2 months		
20.	S.R.O. 539 of 1957	Amendments in Schedule III-B to the I.P.S. (Pay) Rules, 1954.	23.2.57	20.5.57	2 months		

1	2	3	4	5	6	7	8
21.	S.R.O. 855 of 1957	Amendments in the All India Services (Provident Fund) Rules, 1955.	23.3.57	20.5.57	2 months	Ministry of Home Affairs.	
22.	S.R.O. 856 of 1957	Amendments in the All India Services (Conduct) Rules, 1954.	23.3.57	20.5.57	2 months		
23.	S.R.O. 526 of 1957	All India Services (Overseas Pay, Passages and Leave Salary) Rules, 1957	15.2.57	29.5.57	2 months		
24.	S.R.O. 1429 of 1957	Amendments in the All India Services (Provident Fund) Rules, 1955.	11.5.57	17.7.57	2 months		
25.	S.R.O. 1430 of 1957	Amendments in Schedule III of the I.A.S. (Pay) Rules, 1954.	11.5.57	17.7.57	2 months		
26.	S.R.O. 1527 of 1957	Amendments in the Indian Police Service (Recruitment) Rules, 1954.	18.5.57	17.7.57	2 months		
27.	S.R.O. 1154 of 1957	Ministers (Allowances, Medical Treatment and other privileges) Rules, 1957.	13.4.57	9.8.57	3 months		

1	2	3	4	5	6	7	8
28.	S.R.O. 1868 of 1957	Amendments in the Ministers (Allowances, Medical Treatment and other privileges) Rules, 1957.	8.6.57	9.8.57	24 days	Ministry of Home Affairs	
29.	S.R.O. 1986 of 1957	Inter-zonal Wheat Movement Control Order, 1957.	13.6.57	29.7.57	14 days	Ministry of Food and Agriculture	
30.	S.R.O. 1983 of 1957	Amendments in the Bombay Wheat (Movement Control) Order, 1956.	12.6.57	29.7.57	14 days		
31.	S.R.O. 1984 of 1957	Amendments in the Calcutta Wheat (Movement Control) Order.	-do	-do-	-do-		
32.	S.R.O 2251 of 1957	Amendments in the Orissa Rice (Prohibition of Export) Order, 1957	6.7.57	-do-	-do-	Ministry of Food and Agriculture	
33.	S.R.O. 1851 of 1957	Amendments in the Bombay Wheat (Movement Control) Order, 1956	3.6.57	-do-	-do-		
34.	S.R.O 1852 of 1957	Bombay Rice (Export Control) Order, 1957.	3 6.57	-do-	do		

1	2	3	4	5	6	7	8
35.	S.R.O. 2374 of 1957	Amendments in the Displaced persons (Compensation and Rehabilitation) Rules, 1955.	20.7.57	5.8.57	16 days	Rehabilitation	
36.	S.R.O. 2156 of 1957	Amendments in the Coal Mines Pithead Bath Rules, 1946.	29.6.57	-do-	20 days	Labour and Employment	

APPENDIX III

(Minutes)

II

FIRST SITTING

Parliament House, New Delhi: Tuesday the 16th July, 1957.

The Committee met from 16.25 hours to 17.50 hours.

PRESENT

Sardar Hukam Singh - Chairman.

MEMBERS

2. Shri Phani Gopal Sen
3. Shri Anand Chandra Joshi
4. Shri Harish Chandra Mathur
5. Shri R.M. Hajarnavis
6. Shri K.S. Ramaswamy
7. Shri Sinhasan Singh
8. Shri Jitendra Nath Lahiri
9. Shri Bahadur Singh
10. Shri Shamrao Vishnu Parulekar
11. Shri Aurobindo Ghosal
12. Shri J.M. Mohammed Imam
13. Dr. A. Krishnaswami.

SECRETARIAT

Shri S.L. Shakdher - *Joint Secretary.*
Shri N.N. Mallya - *Deputy Secretary.*
Shri A.L. Rai - *Under Secretary.*
Shri P.K. Patnaik - *Under Secretary.*

2. At the outset the Chairman explained the functions of the Committee. His address is reproduced at Annexure A.

3. The Committee had a general discussion *re:* the question of laying Rules on the Table of the House.

4. Thereafter the Committee considered the memoranda prepared by the Secretariat on the following subjects

and orders:—

1. The Mines Rules, 1955 (Memo No. 1)

2. S.R.O. 336 of 1955, amending the Nasirabad Cantonment bye-laws regarding grazing of animals. (Memo No. 2)

3. The Working Journalists Wage Board Rules, 1956 (Memo. No. 3)

4. S.R.O. 2182 of 1956 containing amendment to Rule 272 of the Indian Telegraph Rules, 1951 (Memo No. 4)

5. S.R.O. 449 of 1953 amending the Employees Provident Fund Scheme, 1952 (Memo No. 5)

6. Prevention of Food Adulteration Rules, 1955 (S.R.O. 2106 of 1955) (Memo No. 6)

7. Cotton Textiles (Production by Handloom) Control Order, 1956 (S.R.O. 1077A of 1956) (Memo No. 7)

8. Representation of the People (Conduct of Elections and Election Petitions) Rules, 1956 (S.R.O. 1943 of 1956) (Memo No. 8)

9. The Life Insurance Corporation Rules, 1956 (S.R.O. 1889A of 1956) (Memo No. 9)

10. The Madras Dock Workers (Regulation of Employment) Scheme, 1956 (S.R.O. 2375 of 1956) (Memo No. 11)

11. Bye-Laws for the regulation of erection of enclosures and temporary structures etc., within the limits of Cantonment Board, Aurangabad (S.R.O. 77 of 1956) (Memo No. 12)

12. Amendments to the Coal Mines Conservation and Safety Rules, 1954 (Memo No. 13)

13. S.R.O. 14 of 1956 (Part II Section 4) amending the bye-laws for the regulation of the Collection and recovery of Octroi (without refunds) in Ambala Cantonment (Memo No. 14)

14. S.R.O. 509 of 1957 amending the Coal Mines Provident Fund Scheme (Memo No. 15)

15. Delhi (Control of Building Operations) Regulations (S.R.O. 3487 of 1955) (Memo No. 16)

16. Amendments to the Indian Post Office Rules, 1933 (S.R.O. 499, 663, 664, 665, 735, 794, 799, 800, 874, 878 and 973 of 1957) (Memo No. 17)

17. The Khadi and Village Industries Commission Rules, 1956 (S.R.O. 1006 of 1957) (Memo No. 19)

18. S.R.O. 1005 of 1957 containing amendments to the Cotton Control Order, 1955. (Memo No. 20).

The Mines Rules, 1955 (S.R.O. 1421 of 1955)

5. Rule 7(3) of the Mines Rules, 1955 provided that the resignation of the Chairman or Member of the Mining Board shall take effect from the date of its acceptance by Central Government or the Chairman as the case may be.

6. The above rule was not in accordance with the recommendation of the Committee contained in para 29 of their Third Report that some time limit should be specified in the Rules within which the authority concerned must make a decision on the letter of the resignation of a member.

7. The Ministry of Labour to whom the point was referred, accepted the recommendation of the Committee and accordingly amended the Rules vide S.R.O. 2062 of 1957 providing a period of thirty days within which the resignation of a member was to be accepted.

8. The Committee noted that the rule had since been amended.

S.R.O. 336 of 1955, amending the Nasirabad Cantonment Bye-laws regarding grazing of animals.

9. S.R.O. 336 of 1955 issued by the Ministry of Defence while amending the Nasirabad Cantonment Bye-laws laid down that no animal shall be permitted to graze on the Cantonment grazing land without a permit to be obtained from the executive officer on payment of such grazing fees as may be fixed by the Cantonment Board from time to time.

10. This S.R.O. was made under clause 21 of Section 282(1) of the Cantonments Act, 1924 which empowered the Board to make bye-laws for 'the regulation of the grazing of animals'.

11. A question arose whether the Cantonment Board could appropriately levy grazing fees under clause 21 of Section 282(1) of the Cantonments Act.

12. The Ministries of Law and Defence, to whom the matter was referred, stated as under:-

Ministry of Law -

"The power to regulate the grazing of animals would, in my view, include the power to issue passes or permits for grazing: any provision that no animal shall be grazed without a permit or pass issued by a specified authority would be *intra vires* section 282(21) of the Cantonments Act. Of course unless the Act confers specified powers in this behalf, any bye-laws made under that clause cannot impose a fee on these passes or permits. I may draw attention to clause (26) which expressly provides for prescribing fee payable for licences required under clause (25). In the absence of a similar power provision in regard to the other clauses, I am of the opinion that the levy of a fee for the issue of permits or passes with reference to clause (21) is incompetent."

Ministry of Defence -

All lands situated within Nasirabad Cantonment are the property of the Central Government.

* * * * * * * * *

It is considered that ownership confers on the Government and *ipso facto* on the Cantonment Board the right to deny permission to graze cattle on Government land without payment of charges as may be fixed by the Government or by the Board on their behalf.

* * * * * * * * *

It might be that a bye-law under clause (21) of Section 282(1) of the Cantonments Acts, 1924, cannot appropriately prescribe rates of grazing fee, but this right of the Cantonment Board or the Military Estates Officer to collect grazing fee arises by virtue of ownership of the land and perhaps cannot be questioned.

13. The Committee considered the matter and were of the view that to enable imposition of any fees by rule or bye-law the power should be expressly given under the parent Act. In this case therefore if the Board wanted to levy grazing fees the Act should be suitably amended.

The Working Journalists Wage Board Rules, 1956 - (S.R.O. 1769 of 1956)

14. Rule 15 of the Working Journalists Wage Board Rules, 1956 provided that no act or proceedings of the Board shall be deemed to be invalid by reason merely of any vacancy in the Board or any defect in its constitution.

15. The above Rule did not appear to be covered by section 20 (the rule making section) of the Act. It was a substantive provision of Law whereby the jurisdiction of the court was being curtailed, which should have been provided in the Act itself rather than the Rules.

16. The Ministry of Labour to whom the point was referred appreciated it and replied as follows:-

> "Rule 15 can be said to fall within the ambit of Section 20(1) and Section 20(2)(f) of the Act. This Ministry will, however, take steps to incorporate the rule in the Act itself when the Act is amended."

17. The Committee noted the Ministry's assurance and decided to watch further action on Ministry's part.

18. Further, the above Rules did not mention the number of Members that would constitute the Board. It was felt that for the sake of certainty it should be provided in the Rules.

The Ministry explained the position as under:-

"In regard to the number of Members who may constitute the Wage Board, the Working Journalists Act has laid down only one condition, viz., that an equal number of members shall be nominated to represent the employers in relation to newspaper establishments and working journalists, vide Section 8(2) of the Act. It is thus clear that the intention of Parliament was to vest discretion in the Central Government in regard to the actual number of members who shall constitute the Board. The Wage Board already constituted has a total of six members, three representing each party. It is possible that the Central Government may, at a future date constitute another Wage Board with an enlarged membership, if the situation then warrants such a course. This Ministry therefore, does not consider it advisable to provide in the Rules the number of Members who shall constitute the Wage Board for Working Journalists."

19. The Committee noted the Ministry's reply.

S.R.O. 2182 of 1956 amending Rule 272 of the Indian Telegraph Rules, 1951.

20. S.R.O. 2182 of 1956 amended Rule 272 of the Indian Telegraph Rules, 1951 which provided for the refund of excess amount on the reply paid foreign telegrams. Under the rule, as it existed prior to the amendment contained in S.R.O. 2182 of 1956, the excess amount was refundable only if it was not less than one rupee eight annas. The S.R.O. raised this amount to three rupees two annas.

21. The Ministry of Communications gave the following reasons for the aforesaid increase in amount:-

"India is a party to the International Telecommunication convention, Buenos Aires, 1952. Under Article 12 of that convention it has been laid down that the provisions of the convention are completed by the Telegraph Regulations, Telephone Regulations, etc., which shall be binding on all members. Thus the Telegraph Regulations, Paris Revision, 1949, is binding on India."

In Article 87, para 865 of the Telegraph Regulations, Paris Revision, 1949, it has been prescribed that in the case of a prepaid reply voucher for an amount greater than the charge for the telegram franked by means of the voucher, the difference between the two amounts shall be refunded on condition that it is at least equal to two (gold) francs and that application is made within four months of the date of issue of the voucher. In other words, refund is to be allowed only if the amount notified on the reply telegram form exceeds the charge payable for the telegram sent, by at least two gold francs."

* * * * "According to the existing rate of conversion, the value of two gold francs came to Rs. 3/2/- instead of Rs. 1/8/- prescribed in rule 272 of the Indian Telegraph Rules, 1951. It was accordingly considered necessary to amend rule 272 of the I.T.R. suitably in order to bring it in line with the provisions of the Telegraph Regulations, Paris Revision 1949, which is binding on India in so far as the procedure to be followed in the international telegraph service is concerned."

22. The Committee felt that in view of the explanation given by the Ministry no further action was necessary.

S.R.O. 449 of 1953 amending the Employees Provident Fund Scheme, 1952.

23. S.R.O. 449 of 1953 while amending para 27 of the Employees Provident Funds Scheme, 1952 empowered the Commissioner for the Employees Provident Funds to make certain exemptions in entertaining applications from the employees for opting out of the provisions of the scheme.

24. In respect of this S.R.O. the Committee at their sitting held on the 11th May, 1954 had desired that attention of the Ministry might be invited to the Supreme Court Judgment (A.I.R. 1954 S.C. page 224), which laid down that conferring of arbitrary and uncontrolled power upon the executive to make exemptions without any check was prima facie unreasonable, and their reactions obtained for being placed before the Committee.

25. The Committee also desired that the Ministry should be asked whether submission of such details as 'sex', 'religion' and 'caste' in forms 1, 2, 3 and 4 annexed to the said Scheme was necessary and if so, for what purpose.

26. The Ministry of Labour, explaining the matter, stated that the Commissioner would exercise his power subject to conditions specified in the scheme and that he had not been given any arbitrary or uncontrolled power.

27. Regarding the matter mentioned in para 25 above the Ministry stated that the details as to 'sex', 'religion', and 'caste' were required for purposes of determining the legal heir of the member of the Fund.

28. The Committee noted the position explained by the Ministry.

The Prevention of Food Adulteration Rule, 1955.

29. Rule 4(6) of the Prevention of Food Adulteration Rules, 1955 instead of prescribing the fees payable in respect of certificates of analysis of food samples, left it to the Central Government to specify the same outside the rules. The rule therefore appeared to be not in accord with Section 4(2)(b) of the Prevention of Food Adulteration Act, 1954 which envisaged that such fees would be prescribed in the Rules.

30. The Ministry of Health on a reference being made to them assured that fees payable for such analysis certificates would be included in the rule itself.

31. The Committee at their sitting held on 7th September, 1956 had noted the Ministry's assurances and had decided to watch further action on the Ministry's part.

32. The Committee noted that necessary amendments had since been made in the rule vide S.R.O. 2755 of 1956.

The Cotton Textiles (Production by Handloom) Control Order, 1956.

33. The Cotton Textiles (Production by Handloom) Control Order, 1956

(S.R.O. 1077A of 1956) which was made under Section 3 of the Essential Commodities Act, 1955 introduced compulsory registration of Handlooms.

34. The Committee at their sitting held on the 7th September, 1956 had considered the following points raised in connection with the above order:-

(1) Can a weaver be prevented from using or having in his possession a loom, if he does not register under para 2 of the Order?

(2) Is it compatible with Art. 19(1)(g) of the Constitution?

35. The Committee decided to make a reference to the Ministry and get a full clarification regarding the object, effect and legality of the order in the first instance

36. The Ministry of Commerce and Industry to whom a reference had been made in their reply made out the following points:-

(a) The basic idea of the order has been only to collect statistical information The order contains no provision to penalise the weavers who fail to get their looms registered. State Governments have been asked that any unauthorised loom if found, may be seized, but if the owner of the loom proves his bonafides to the satisfaction of the Registering Authority, he may be permitted to make his application on receipt of which registration certificate may be issued to him.

(b) As experience has shown, it is not possible to get any accurate figures of handlooms on voluntary basis

or even through the Governmental machinery for there is no practical method of collecting such statistics. Unless the exact number of looms is ascertained it would be difficult to calculate the quantity of yarn which will be required for consumption by the Handloom Industry and the extent to which the existing capacity for the production has to be increased.

(c) The requirement of compulsory registration does not prevent a weaver from carrying on his occupation trade or business. It is only a reasonable restriction in the interest of the general public within the meaning of Art. 19(6). The contention about hardship to weavers who ply their looms in remote villages is not valid because there are a large number of registering authorities under the order.

37. The Committee were of the view that the Central Government had no authority by which the State Government could be asked to seize a loom even for a short period when the weaver had not registered it.

The Representation of the People (Conduct of Elections and Election Petitions) Rules, 1956 (S.R.O. 1943 of 1956).

38. Rule 143 of the Representation of the People (Conduct of Elections and Election Petitions) Rules, provided that the time within which any owner of premises or vehicles aggrieved by the amount of compensation determined under section 161 of the Representation of the Peoples Act, 1951 might make an application for referring the matter to arbitration shall be 14 days from the date of determination of the amount of such compensation.

39. It was felt that to avoid hardships the time limit of 14 days should be calculated not from the date of determination of the amount

of compensation but from the date the owner of the premises or vehicles was given intimation of the amount of compensation.

40. The Ministry of Law on a reference being made intimated as follows:-

> "Rule 143 is a reproduction of rule 123 of 1951 Rules. Since it has not caused any difficulty during the last five or six years the rule may remain as it is."

41. The Committee were of the view that the time limit for making applications for referring the matter to arbitration should be 14 days from the date the owner was given intimation of the amount determined as compensation.

The Life Insurance Corporation Rules, 1956 (S.R.O. 1889A of 1956)

42. Rule 4 of the Life Insurance Corporation Rules provided that the resignation of the Chairman or Members of the Life Insurance Corporation shall take effect from the date of its acceptance by the Central Government.

43. The above Rule was not in accordance with the recommendation of the Committee contained in para 29 of their Third Report that some time limit should be specified in the Rules within which the authority concerned must take a decision on the letter of resignation of a member.

44. The Ministry of Finance to whom the point was referred, appreciated Committee's recommendation and replied as follows:

"There will be no difficulty in allowing resignation of a Member of Life Insurance Corporation of India to come into force,

(a) automatically from the date of resignation or

(b) within a given period after the receipt of resignation.

45. The Committee recommended that Rule 4 should be amended to provide for a period of thirty days within which the letter of resignation might be accepted.

The Madras Dock Workers (Regulation of Employment) Scheme, 1956 (S.R.O. 2375 of 1956).

46. Clause 4(7)(a) of the Madras Dock Workers (Regulation of Employment) Scheme, 1956 provided that a member of the Board shall hold office for a period of three years from the date of notification appointing him as a member and shall be eligible for re-appointment.

Provided that an outgoing member shall continue in office until the appointment of his successor is notified in the official Gazette.

47. It was felt that the proviso to the above clause seemed to be not in accordance with the recommendation of the Committee as contained in para 29 of their Third Report that there should be no such limitation on a member when he wanted to resign.

48. On a reference being made, the Ministry of Labour clarified the position as under:-

> ....there is no provision in the Madras Scheme that the resignation of a member of the Board will be subject to its acceptance by any authority with the result that duch a resignation takes effect from the date it is submitted to the authority concerned. Proviso to clause (a) of para 4(7) refers to continuance in office of a member after the expiry of his term of 3 years until his successor is appointed. It does not relate to continuance after resignation.'

49. The Committee noted the clarification given by the Ministry.

Bye-laws for the regulation of erection of enclosures and temporary structures etc., within the limits of

Cantonment Board, Aurangabad (S.R.O. 77 of 1956 Part II, Section 4)

50. Para 1 of the above mentioned bye-laws, provided for the levy of fees by the Cantonment Board for the erection of fence or enclosure or other such temporary structure on the land, within the limits of the Cantonment.

51. The above bye-laws were framed under clause (18) of Section 282 of the Cantonments Act, 1924 (II of 1924) which provided only for the regulation of such structures. It was felt that clause (18) of Section 282 of the Act did not import the levy of fees .

52. The Ministry of Defence agreed with the point and replied as under:-

> 'The Ministry of Law was consulted as to whether the Cantonment Boards could levy fees or taxes for erection of enclosures and/or temporary structures. They are of the opinion that the Cantonment Boards are not competent to levy such taxes. They have also advised that if it is intended to retain the clause regarding levy of fees, the Cantonments Act will have to be amended suitably.
>
> x x x x x
>
> Necessary action is being taken by this Ministry to withdraw these fees/taxes wherever these have already been levied and instructions are being issued to the various Cantonment Boards to delete the clause in this respect from the Bye-laws framed by them.'

53. The Committee noted that the instructions to delete the clause levying fees in the bye-laws have since been issued by the Ministry to the various Cantonment Boards.

Amendments to the Coal Mines Conservation and Safety Rules, 1954.

54. The Ministry of Production invited the views of the Committee on

the following proposed amendments to the Coal Mines Conversation and Safety Rules.

(1) In rule 21, in sub-rules (2), (3) and (4) after the words 'nominated members' the words 'referred to in clause (d) of sub-rule (1)' shall be inserted.

(2) the proviso to sub-rule (1) to rule 53 shall be omitted.

The reasons given by the Ministry for the proposed amendments were that expression 'nominated member' which occurs in the existing sub-rules (2), (3) and (4) of Rule 21 was susceptible to two meanings viz., member nominated by the Board or nominated by the Coal Mining Association under clause (d) of rule 21(1). The amendment at Serial No. 1 sought to do away with that ambiguity. The amendment at Serial No. 2 sought to omit certain restrictions placed on the powers of the Coal Board to grant assistance to the owner, agent or manager of a Coal Mine.

56. The Committee agreed with the two amendments proposed by the Ministry.

S.R.O. 14 of 1956 (Part II, Section 4) containing amendments to Bye-laws for the regulation of the collection and recovery of octroi (without refund) in Ambala Cantonment.

57. Clause (2) of the bye-law 34A provided for a security deposit of Rs. 1000/- by a person to enable him to make use of the Re-export Pass System and this security was liable to confiscation in the event of any infringement of the bye-laws. The confiscation was in addition to Rs. 100/- which a person had to pay as fine under bye-law 35.

58. Section 283 of the Cantonments Act, 1924 (II of 1924) provides for the penalty for the breach of bye-laws framed under Section 282 of the Act, which reads as follows:-

'283. Any bye-law made by a Board under this Act may provide that a contravention thereof shall be punishable

(a) with a fine which may extend to one hundred rupees: or

(b) With a fine which may extend to one hundred rupees and, in the case of a continuing contravention with an additional fine which may extend to twenty rupees for every day during which such contravention continues after conviction for the first such contravention:

(c) With a fine which may extend to ten rupees for every day during which the contravention continues after the receipt of a notice from the Board by the person contravening the bye-law requiring such persons to discontinue such contravention

59. In view of the above it was felt that the provisions regarding the confiscation of security under clause (2) of bye-law 34A went beyond the penal powers granted under the said Section 283 of the Act

60. The Ministry of Defence explained the position as under:-

> The bye-law which is intended to be check on attempts at evasion can be justified as falling within the scope of the power conferred by clause (3) of section 282 of the Cantonment Act. 1924 to *regulate* the collection and recovery of the Tax.
>
> x x x x x
>
> the bye-law had been inserted for the facility and at the instance of the traders affected and follows a similar provision in the Punjab Municipal Code in regard to the levy of Octroi.'

61. The Committee felt that the power of regulation and imposition of fees under Section 282(3) of the Act (the bye-law making authority) did not empower the Board to levy penalties beyond the statutory provisions laid down under Section 283 of the Cantonments Act, 1924.

62. The Committee were of view that the confiscation of Security deposit was not authorised under the parent Act. Hence bye-laws 34A(2) went beyond the rule making power of the Cantonment Board.

S.R.O. 509 of 1937 amending the Coal Mines Provident Fund Scheme.

63. S.R.O. 509 of 1957 amending para 7 of the Coal Mines Provident Fund Scheme authorised the Central Government to remove any trustee from the Board of trustees, if his continuance was otherwise found undesirable, even though he might continue to represent the interests on whose behalf he was nominated.

64. A reference was made to the Ministry of Labour to state whether there was any special reason for giving such wide powers to the Government.

65. The Ministry intimated that under Employees Provident Fund Scheme a case had occurred wherein a member of the Board of Trustees, who represented the interests of employers on the Board, defaulted in payment of contributions to the fund to the extent of several lakhs of Rupees. The continuance of such a person on the Board of Trustees was considered undesirable, hence the amendment in the Coal Mines Provident Fund Scheme was made.

66. The Committee noticed with satisfaction the way in which the power to remove a trustee had been used by Government so far and hoped that in future it would not be used in an arbitrary manner.

The Delhi (Control of Building Operations) Regulations (S.R.O. 3487 of 1955)

67. Rules 5(2)(i) and 5(3)(i) of the Delhi (Control of Building Operations) Regulations imposed certain charges on the applicants before permission for the development of land could be granted to them.

68. It was felt that such charges could not be levied as Section 19 of the Delhi (Control of Building Operations) Act, 1955, under which the said regulations were made, did not authorise for the same.

69. On a reference for clarification of the point, the Ministry of Health replied that the charges were in the nature of a fee for the amenities provided, such as, trunk sewers, water mains etc, and not a tax and that the levy of such charges was merely incidental to the power of effective control and regulation of building operations which was the object of the principal Act.

70. The Committee at their sitting held on the 17th December, 1958 considered the above regulations along with the views of the Ministry of Health.

71. The Committee decided that the opinion of the Attorney General should be obtained on the following two points:

(i) whether the charges imposed under rules 5(2)(i) and 5(3)(i) of the Delhi (Control of Building Operations) Regulations were a tax or a fee.

(ii) Whether under the rule making power as embodied in Section 19 of the Delhi Control of Building Operations) Act, 1955 such charges could be levied.

72. The Attorney General to whom the matter was referred held the view that it would be difficult to justify the regulations in question in so far as they provided for a charge as a condition precedent to the

grant of permission for the development of land under section 8 of the Delhi (Control of Building Operations) Act.

73. In the opinion of the Attorney General the question whether the charges were a fee or a tax did not seem to be of much consequence as the same principle would be applicable both to a tax and a fee.

Copy of the opinion of the Attorney General is given at Appendix I

74. The Committee considered the said regulations in the light of the opinion given by the Attorney General and recommended that the regulations should be amended accordingly.

Amendments to the Indian Post Office Rules, 1933 (S.R.O. 499, 663, 665, 735, 794, 799, 800, 874 and 973 of 1957.

75 The Committee in para 76 of their Sixth Report had recommended that authority giving power to make rules, regulations etc. should be specifically cited in preamble to the rules for the purpose of enabling all concerned to know under what precise authority the rules have been made

76. The Ministry of Communications did not cite the specific section of the parent Act in the preamble to S.R.Os. 2950 and 2951 of 1956 The point was referred to the Ministry which stated that it was the practice in the past not to cite in the preamble to the notifications (S.R.Os.) the sections of the parent Act, however, they would mention in the preamble in notifications to be issued in future

77 The Ministry however did not cite the specific section of the parent Act in the preamble of the S.R.Os. 499, 663, 664, 665, 735, 794, 799 800 874 878 and 973 of 1957 which were issued after the receipt of the above assurance. A reference was again made to the Ministry which

have now furnished the relevant sections of the parent Act under which the above S.R.Os. were issued.

78. The Committee emphasised that Ministries should take steps to ensure that the specific section of the parent Act were invariably cited in the preamble of all rules regulations etc. for the purpise of enabling all concerned to know under what precise authority the rules were made

The Khadi & Village Industries Commission Rules, 1957 (S.R.O. 1006 of 1957)

79. Rule 17 of the Khadi & Village Industries Commission Rules, 1957 as published in S R O 1006 of 1957 reads as follows:-

> 17 *Resignation* A member of the Board other than a member of the Commission may resign his office by a letter addressed to the Government through the Chairman of the Commission provided that the member who has tendered his resignation shall not vacate his office unless his resignation is accepted and notified in the Official Gazette

80. As the rule was not in accordance with the recommendations of the Committee contained in para 29 of their Third Report that some time limit should be provided within which the decision on the resignation of the member should be taken a reference was made to the Ministry of Commerce and Industry inviting their attention to the recommendation of the Committee.

81. The Ministry appreciated the point and amended Rule 17 vide S.R.O. 2034 of 1957 providing for time limit within which the decision on the resignation of member ought to be taken. The amended

Rule 17 reads as follows:-

> "A Member of the Board other than a member of the Commission may resign his office by a letter addressed to the Government through the Chairman of the Commission who shall forward it to the Government within ten days of its receipt. The office of such member shall fall vacant from the date on which his resignation is notified in the official Gazette or on the date of expiry of twenty days from the date of receipt by the Government of the letter of resignation, whichever is earlier."

The Committee approved Rule 17 as amended.

S.R.O. 1005 of 1957 containing amendments to the Cotton Control Order, 1955.

83. In Rule 14B(3) as published in S.R.O. 1005 of 1957 there was an error in citing sub-clause (3) of section 5 of the Essential Commodities Act, 1955 (10 of 1955) as there was no sub-clause (3) to section 5 of the Act.

84. The Ministry of Commerce & Industry whose attention was drawn towards it rectified the matter by issuing a corrigendum vide S.R.O. 2541 of 1957.

85. The Committee noted the same.

The Committee then adjourned to meet after a fortnight on a date to be fixed by the Chairman.

ANNEXURE A

Address delivered by the Deputy Speaker (Sardar Hukam Singh) to the Members of the Committee on Subordinate Legislation on the 16th July, 1957.

I am glad that it is now my privilege to welcome you here in this Committee. Some of us are old members, and we shall have the benefit of their study and experience in the working of this Committee. Others who join now have fresh ideas and new approach to grapple with the problems that would require our earnest efforts and careful attention.

Our Committee has very important functions to perform. As elected representatives of the people we have to safeguard the interests of the people. We have a written Constitution and certain broad limits have been laid down within which the Parliament is to function as a Sovereign body. There is the Judiciary to declare whether any limits have been transgressed. Then as the Supreme Legislature of the land the Parliament enacts laws and directs the Executive to administer those laws. In a Welfare State the spheres of activity of the State are increasing and the administration pervades every walk of a citizen's life. Naturally the work of the Parliament increases, and the scope of the legislation becomes very wide. Even where the Parliament is continuously in session as in England, except for brief

intervals of recess, it is not poesible for it to enact all details of legislation that are required in the country. Besides that, there is always a need for certain amount of flexibility within which adjustments may be necessary at occasions. Sometimes immediate action becomes necessary and technical details can be worked out only by experts. It is agreed now that the delegated legislation is a necessity. But at the same time there is a risk involved in it. Unless suitable checks are exercised there is always the danger of the executive abusing the powers vested in it. It is this Committee which would be exercising these checks on behalf of the Parliament. We shall have to see whether the authority delegated by Parliament in the Statutes has been properly exercised to the extent permissible and in the manner envisaged. We shall be making our reports to the Parliament advising it for taking any action which may be deemed necessary.

But in discharging our duties we would not be acting in hostility to the Executive. Our objective is uniform and our efforts would be complementary. The executive always try to comply with the wishes of the Parliament and frame rules and regulations in exercise of the authority vested in them by law. Sometimes in their eagerness to discharge their duties more expeditiously and effectively the Executive may commit mistakes. May be, sometimes out of thirst for greater power they might go astray. We have to keep them on the right track. We are the friends of the Executive and not their enemies. We have to help them in the proper discharge of their duties for benefit of the masses.

There is another danger. The Subordinate Legislation, namely the rules, regulations, bylaws and orders, are mostly framed by the officials of the Secretariat in their rooms. These officials have a different approach. They have little contact with the masses, and seldom know what is the effect of a particular legislation on those who are affected by it. We know the intentions of the legislature as well as the interests of the people and hence we are best suited to advise in these respects.

This Committee has another peculiar feature. There are no parties and no factions here. Once a law is enacted by the vote of the majority, it becomes the combined will of the Parliament. Then it is the concern of all parties to see that it is administered properly. From the proceedings of this Committee, Members might have noticed that all the decisions were arrived at unanimously and I hope that that tradition would be continued by us too and we would be able to pull on in a combined manner and cooperatively and with the same will and determination as is expected of us. I welcome you all.

II

*SECOND SITTING

Parliament House, New Delhi: Friday the 2nd August, 1957.

The Committee met from 16.00 hours to 17.10 hours.

PRESENT

Sardar Hukam Singh — *Chairman*

MEMBERS

2. Shri Anand Chandra Joshi
3. Shri Harish Chandra Mathur
4. Shri R.M. Hajarnavis
5. Shri K.S. Ramaswamy
6. Shri Sinhasan Singh
7. Shri Bahadur Singh
8. Shri T.N. Vishwanatha Reddy
9. Shri Shamrao Vishnu Parulekar
10. Shri Aurobindo Ghosal.

SECRETARIAT

Shri N.N. Mallya - *Deputy Secretary.*

Shri A.L. Rai — *Under Secretary.*

2. The Committee considered and took desisions on memoranda prepared by the Secretariat on the following subjects and Orderes:-

1. S.R.O. 2951 of 1956 amending the Indian Post

*Omitted portions are not covered by the First Report

Office Rules, 1933. (Memo. No.10).

2. * * * * * * * *

3. The Agricultural Produce (Development and Warehousing) Corporations Rules, 1956 (S.R.O. 2408 of 1956). (Memo. No. 21).

4. Non-citation of the short titles of the Rules in the 'Orders'. (Memo. No. 22).

5. Delay in laying 'Orders' on the Table. (Memo. No. 23).

6. The Carbide of Calcium Rules, 1937. (Memo. No. 24).

7. Fertiliser (Control) Order, 1957. (Memo. No. 25).

8. Amendment to the Central Opium Rules, 1934. (S.R.O. 1436 of 1957). (Memo. No. 26).

9. Bye-laws for the regulation of stabling or herding of animals and for licensing of premises for use as stables or cow-houses in Willington, Cantonment (S.R.O. 270 of 1956 - Part II. Section 4). (Memo. No. 27).

10. All India Services (Overseas, Pay, Passages and Leave Salary) Rules, 1957 (S.R.O. 526 of 1957). (Memo. No. 28).

11. Rules relating to Statutory Bodies on which Lok Sabha is partially represented. (Memo. No. 29).

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* Omitted portions are not covered by the First Report.

S.R.O. 2951 of 1956 Amending the Indian Post Office Rules, 1933.

3. S.R.O. 2951 of 1956 which was made under the Indian Post Office Act 1898, amended Rule 74 of the Indian Post Office Rules, 1933 and sought to convert into decimal coinage the existing rates of fees chargeable for insurance of postal articles.

4. In respect of this S.R.O. two points arose viz. (i) specific section of the parent Act under which the S.R.O. was issued could not be known as no such section was cited in the preamble thereof, and (ii) it was not clear how the existing fee of annas three for insurance of postal articles would come to 20 naye Paise, as according to conversion Table it should have come to 19 Naye Paise.

5. The Ministry of Communications to whom the above two points were referred for clarification stated as under:-

'.....it has been the practice in the past not to cite in the preamble to the notifications (S.R.Os.) the Section of the parent Act (P.O. Act, 1898) under which any particular amendments are made inasmuch as the Indian Post Office Rules do not cite any section of the Act, under which the rules are made. However, the relevant section of the Indian P.O. Act will be mentioned in the preamble, as desired in notifications to be issued in future.

As regards the amendment of rule 74 of the Indian Post Office Rules, it may be stated that the rates etc., in the Indian Post Office Rules have not merely been converted into decimal coinage according to the conversion table but these

rates have been revised and refixed afresh in terms of decimal coinage. after considering the various financial and other implications involved.'

6. Regarding the first point the Committee emphasised that specific section of the parent Act should invariably be cited in the preamble of all rules. regulations etc. for the purpose of enabling all concerned to know under what precise authority the rules were made.

7. In respect of amendment to rule 74 the Committee noted the Ministry's reply.

8. x x x x

9. x x x x

10. x x x x

11. x x x x

The Agricultural Produce (Development & Warehousing) Corporations Rules. 1956 (S.R.O. 2408 of 1956).

12. Rules 6 and 13 of the Agricultural Produce (Development and Warehousing) Corporations Rules. 1956 provide that a non-official member of National Co-operative Development and Warehousing Board may resign his office but such resignation shall be effective from the date on, which it is accepted. There was nothing in the rules to direct the authority concerned to accept the resignation, in a reasonable time.

13. In similar cases the Committee had earlier observed that there should be no such limitation on a member when be wanted to resign and that some time limit should be specified within which

the authority concerned must take a decision on the letter of resignation of a member.

14. The Ministry of Food and Agriculture whose attention was drawn to the above observations of the Committee stated that they had no objection to specify the time limit of one month during which a decision on the resignation should be taken.

15. The Committee desired that the Ministry should amend Rules 6 and 13 accordingly.

Rule 32(3) of the said rules empowered the National Co-operative Development and Warehousing Board to determine the Status of an institution whether it is qualified to be a shareholder of the corporation or not and such decision of the Board shall be final.

16. The exercise of such power appeared to oust the jurisdiction of the courts to determine a fact which was judicial in nature. The parent Act [Agricultural Produce (Development and Warehousing) Corporations Act, 1956] did not contain any authorisation in this behalf. Further the rule might cause hardship to the party affected as there was no provision for giving an opportunity of being heard or a right to appeal against the decisions of the Board.

17. In this connection the Ministry of Food and Agriculture stated as under:-

'.....this sub-rule merely empowers the Board to rectify an error in allotment of shares which may have been committed due to inadvertent acceptance of a subscriber's

claim to be qualified for allotment of shares. Such a provision is necessary to carry out the purposes of the Act and is, therefore, within the scope of the rule-making authority conferred by Section 52(1). Section 18 having provided for subscription to the capital by only specified categories of persons, the issue of shares to anyone falling outside those categories would be contrary to the provisions of the Act. A provision for rectification of such an error cannot be regarded as beyond the scope of the Act and as such outside the rule-making power. The rule relates to matter arising under the provisions of the Act and is valid.

The action of the Board cannot properly be regarded as judicial since the Board is not an administrative agency or a body of persons charged with the function of determining the rights of parties brought or coming before it for adjudication. In acting under Rules 32(3), the Board would merely be exercising powers of control over the affairs of the Warehousing Corporation. Its order could not have any finality or binding force so as to take away the right to legal remedies available under the ordinary law. The affected party will be entitled to maintain a suit for declaration that it was entitled to the allotment of the shares and for consequential relief flowing out of such declaration of its proprietary right. It does not appear, therefore, to be necessary to provide for affording an opportunity to be heard and give a right of appeal."

18. The Committee felt that the decision of the Board

should be subject to adjudication by a court of law and the ambiguity created by the use of word 'final' in regard to the decision of the Board should be corrected.

19. Rule 10(iv) empowers the Central Government to terminate the services of the Secretary of the Board, appointed under Rule 10(ii) at any time, without assigning any reasons therefor, by giving three months notice.

20. The sub-rule seemed to give unusual power to the Central Government to remove the Secretary without giving any reason or any opportunity of being heard.

21. After some discussion on the point, the Chairman suggested that he would examine the matter further and place it before the Committee at their subsequent sitting.

22. The Committee then held over further discussion thereon.

Non-citation of the Short Titles of the Rules in the 'Orders'.

23. According to an earlier recommendation of the Committees contained in para 44 of their Third Report, all 'Orders' should bear a short title in order that they may be referred to conveniently, located easily and understood by the public. In the following cases,

the 'Orders' did not bear any short title :-

S.No.	No. of 'Order'	Part of the Gazette in which published.	Date of Publication.	Name of Ministry.
1.	S.R.O. 9 of 1957.	Part II Sec. 4	12.1.57	Min. of Defence.
2.	S.R.O. 1713 of 1957	Part II Sec. 3	25.5.57	Min. of Labour & Employment.
3.	S.R.O. 1714 of 1957	-do-	-do-	-do-
4.	S.R.O. 1715 of 1957	-do-	-do-	-do-
5.	S.R.O. 1716 of 1957	-do-	-do-	-do-
6.	S.R.O. 1717 of 1957	-do-	-do-	-do-
7.	S.R.O. 378 of 1957	-do-	2.2.57	Min. of Transport and Communications.
8.	S.R.O. 1325 of 1957	-do-	4.5.57	-do-
9.	S.R.O. 1400 of 1957	-do-	-do-	Min. of W.H. & S.
10.	S.R.O. 431 of 1957	-do-	9.2.57	Min. of Railways.

24. The Committee emphasised that all rules should bear a short title.

Delay in laying of 'Orders on the Table.'

25. The Committee had in their earlier reports recommended that all rules required to be laid should be

laid within a period of 7 days after their publication in the gazette. The government represented that a period of not shorter than 15 days would be practicable for laying the rules before the House.

26. The Committee regretted to note that even that time limit had not been adhered to by them.

27. The Committee further observed that whenever rules were placed on the Table of the House after the prescribed period they should be accompanied by a statement explaining the reasons for the delay.

28. The Committee decided that delay in laying 'Orders' on the table shown in the Annexure B should be reported to the House.

The Carbide of Calcuim Rules, 1937.

29. Rule 13 of the Carbide of Calcium Rules, 1937, made by the Central Government under the Petroleum Act, 1934, provided as follows:-

> ''13. Port Commissioner's Regulations:- The landing and the removal after landing of carbide in a port shall be subject to all the regulations which may from time to time be prescribed generally or specifically in that behalf by a Port Administration provided such regulations are not inconsistent with these rules.''

30. This rule sub-delegated rule-making power to subordinate authorities such as Port Commissioners. Accordingly Kandla (Carbide of Calcium) Regulations (S.R.O. 2145 of 1955) were issued by the Development

Commissioner, Kandla Port.

31. Section 29 of the Petroleum Act under which the Carbide of Calcium Rules were framed did not authorise the Central Government to sub-delegate its rule-making power to Port authorities for issuing regulations. It was therefore felt that Rule 13 of the said Rules was beyond the scope of the parent Act.

32. The Ministry of Transport to whom a reference was made, forwarded following extracts of the Law Ministry's note recorded on the said rule 13.

> ''Rule 13 does not purport to confer or sub-delegate any rule-making authority to the Port Administrations. Although the word ''prescribed'', has been used, the use of the word 'regulation' shows that it has not been used in the sense assigned to it by the definition in section 2(b) of the Petroleum Act i.e. in the sense of being prescribed by *rules* made under the Act. The sole purpose of rule 13 is to make a complete code of the rules relating to landing and removal after landing of carbide prescribed under the Act by incorporating therein by reference all regulations made in exercise of independent powers by Port Administrations and there is no sub-delegation.
>
> However, as the word 'prescribed' is apt to mislead, it is suggested that the rule may be suitably amended to avoid all misconstruction. This appears to be particularly necessary because some Port Administrations including among them the Conservator, Madras Port, have been misled into using it as the source of their power to make regulations.
>
> x x x x

It will have to be examined whether the rules made by the Port Administrations under rule 13 of the Carbide of Calcium Rules, 1937 can be made under some other enactment applicable to them. If not, the supplementary rules will have to be issued under the Petroleum Act by the Central Government.''

33. The Ministry of Transport also informed that the Ministry of Works, Housing and Supply who were concerned with the administration of Carbide Rules, had suggested deletion of the said Rule 13 and assured that the regulations made by the Port Administrations would be re-issued by the Central Government under the Petroleum Act, 1934.

34. The Ministry further intimated that the said regulations had been re-issued in draft form by the Central Government in accordance with sub-section 2 of Section 29 of the Petroleum Act and the action to delete Rule 13 of the Carbide of Calcium Rules (which sought to sub-delegate legislative powers) would be taken after the finalisation of the draft rules.

The Committee noted the Ministry's reply.

Fertilizer (Control) Order, 1957 (S.R.O. No.1391 of 1957.

35. The Fertilizer (Control) Order, 1957 was made under Section 3 of the Essential Commodities Act, 1955. This order was laid on the Table of the House on the 28th May, 1957 in pursuance of sub-section (6) of the said section.

36. Clauses 2(b), 3, 4, 13 and 21 of the above order envisage the issue of subsidiary orders regarding appointment of controller, fixation of maximum and minimum prices for fertilizers, directions to manufacturers regarding packing etc.

37. The Ministry of Food and Agriculture had sought the advice of the Committee as to whether such subsidiary orders were to be deemed to have been issued under section 3 of the Essential Commodities Act and consequently were to be laid before Parliament in terms of sub-section (6) of the said section.

38. The laying provision contained in Section 3(6) of the Essential Commodities Act reads as under:

> 'Every order made under this Section by the Central Government or any officer or authority of the Central Government shall be laid before both Houses of Parliament as soon as may be after it is made.'

39. The Committee considered the matter and were of the view that all subsidiary orders made under the Fertilizer (Control) Orders are to be deemed to have been issued under Section 3 of the Essential Commodities Act and ought to be laid before Parliament.

Amendment to the Central Opium Rules, 1934 (S.R.O. 1436 of 1957)

40. The S.R.O. was taken up by the Committee. After some discussion Shri R.M. Hajarnavis, a member of the Committee offered to examine the matter further and

place a note thereon before the Committee, at their subsequent sitting.

41. The Committee then held over further discussion on the point.

Bye-Laws for the Regulation of Stabling or herding of animals and licensing of premises for use as stables of cow-houses in Willington Cantonment (S.R.O. 270 of 1956) - Part II, Section 4.

42. Para 6 of the above bye-laws provided for a charge of Rs. 3/- as a license fee by the Cantonment Board from every licensee for the herding and stabling of any animal specified in Para 1 of the bye-laws.

43. Clause (11) of Section 282 of the Cantonments Act, 1924 (II of 1924), under which these bye-laws were framed provided only for the regulation or prohibition of the stabling or herding of animals. It did not import the levy of licence charges.

44. A similar point in the case of Nasirabad Cantonment bye-laws (S.R.O. 333 of 1955) was considered by the Committee at their sitting held on 16.7.57. The Committee decided that the Cantonment Board could not levy such charges without the express authority of the Act and they suggested that if the Board wanted to levy such charges then the Act would have to be amended suitably.

45. The Committee were of the view that to enable imposition of any fees by rule or bye-law the power

could be expressly given in the parent Act. In this case, if the Cantonment Board wanted to charge licence fee for the herding and stabling of any animals the Act should be suitably amended.

All India Services (Overseas Pay, Passages and Leave Salary) Rules, 1957 S.R.O. 526 of 1957

46. The All India Services (Overseas Pay, Passages and Leave Salary) Rules, 1957 were published on the 15th February, 1957 but were given retrospective effect from the 12th July, 1956.

47. The Rules were made under the All India Services Act, 1951 which does not expressly empower the Government to give retrospective effect to the rules made thereunder.

48. After some discussion on the point Shri R.M. Hajarnavis, a member of the Committee offered to study the matter further and place a note thereon before the Committee at their subsequent sitting.

49. The Committee held over further discussion on the point.

Rules relating to statutory bodies in which Lok Sabha is partially represented

50. Representatives of Lok Sabha are appointed from time to time on various statutory Bodies. Such nominees are either elected by the House or nominated by the Speaker. Rules relating to the working of such

bodies, tenure of office of members etc. are framed by the Central Government in pursuance of powers given by the relevant Acts.

51. It was felt that the provisions relating to the mode of appointment and term of office of the representatives of Lok Sabha on Statutory bodies should be clear, specific and uniform. Further in the statutory bodies where Parliament is represented the proportion of members for Lok Sabha and Rajya Sabha should be in the ratio of 2:1 as recommended by the Committee in para 27 of their Third Report.

52. In this respect the Committee examined the rules regarding the following statutory bodies where provisions were considered inadequate:-

I

The Employees State Insurance Corporation constituted under Section 3 of the Employees State Insurance Act, 1948 (XXXIV of 1948)

53. There is no provision in the State Employees Insurance Act, 1948 or the Rules made thereunder that if a member representing Lok Sabha on the Employees State Insurance Corporation ceases to be a member of the House, he shall cease to be member thereof.

54. The Ministry of Labour to whom the point was referred replied as under:-

The question whether members of Parliament cease to be members of the Corporation under the

Employees' State Insurance Act, 1948, if the Parliament is dissolved or its term expires or the members cease to be members of Parliament, was examined in 1952 after the 1st General Elections. The Ministry of Law advised that the persons concerned continued to be members of the Corporation irrespective of the fact that they ceased to be members of the Parliament.

55. The Committee recommended that the necessary amendment may be made in the Act so that representatives of the Lok Sabha shall cease to be members of the Corporation on their ceasing to be members of the Lok Sabha.

56. The Corporation consists of about 38 members. Parliament is represented on the Corporation by two members, one from Lok Sabha and one from Rajya Sabha. This is not in accordance with the recommendation of the Committee contained in Para 27 of their Third Report that if Parliament is represented on any body to be constituted by Government, the ratio between the members of the Lok Sabha and Rajya Sabha should be 2:1.

57. The Ministry of Labour replied to the above point as under:

As regards the ratio between the members of the Lok Sabha and the Rajya Sabha who may be elected members of the Corporation, the Department of Parliamentary Affairs have advised that when the number of members on a Statutory Committee was less than 3, representation should be given to the Lok Sabha when it was one, and one to each House when it was two.

58. The Committee recommended that the Act may be amended to provide that Parliament should be represented

by 3 members so that it may be in accordance with the recommendation of the Committee.

II

The Coffee Board constituted under Section 4 of the Coffee Act, 1942 (VII of 1942).

59. There is no provision in the Coffee Act, 1942 or the rules made thereunder that if a member representing Lok Sabha on the Coffee Board ceases to be a member of the Lok Sabha he shall cease to be member thereof.

60. The Ministry of Commerce and Industry to whom the point was referred have amended the Coffee Rules, 1955 accordingly, vide S.R.O. 2221 of 1957.

61. The Committee noted that the amended rule met the intention of the Committee.

III

The Rubber Board constituted under Section 4 of the Rubber Act, 1947 (XXIV of 1947)

62. There is no provision in the Rubber Act, 1947 or the rules made thereunder that if a member representing Lok Sabha on the Rubber Board ceases to be a member of Lok Sabha, he shall cease to be member thereof.

63. The Ministry of Commerce and Industry to whom the point was referred have since amended the Rubber Rules, 1955 accordingly, vide S.R.O. 2220 of 1957.

64. The Committee noted that the amended rule met the intention of the Committee.

IV

The Samsad (Court of Visva-Bharati) constituted under Sections 18 and 19 of the Visva-Bharati Act, 1951 (XXIX of 1951)

65. Clause 11(12) of the First Statutes of the University governing the termination of membership of Samsad of the M.Ps. thereon read as follows:-

> 'No member elected, nominated or appointed to the Samsad (court) in his capacity as a member of a particular body or as the holder of a particular post shall hold office for a period longer than three months after he ceases to be a member of that body or ceases to hold that post, unless in the meantime he again becomes a member of that body or is re-appointed to that post.'

66. The effect of the above clause appears to be that members of the Lok Sabha on the Samsad continue to represent the Lok Sabha even after dissolution of the Lok Sabha which elected them, if they are again elected to the Lok Sabha within three months, without their being re-elected by the new Lok Sabha to serve on the Samsad.

67. The Ministry of Education replied as under:-

The Ministry of Law who have been consulted in the matter have confirmed that interpretation (of Lok Sabha Secretariat). That Ministry have also observed that if it was intended that members of old Lok Sabha on the Samsad (Court) should not continue to be members of the Samsad after the dissolution of the Lok Sabha and that the new Lok Sabha should elect its own representatives on the Samsad, it would be necessary to amend the Statutes suitably.

68. The Committee recommended that specific provisions should be made in the Statutes to provide that a member of Lok Sabha on the Samsad shall cease to be a member thereof, if he ceases to be member of Lok Sabha.

69. The Samsad consists of about 45 members. Parliament is represented on the Samsad by two members, one from Lok Sabha and one from Rajya Sabha. This is not in accordance with the recommendation of the Committee contained in Para 27 of their Third Report that if Parliament is represented on any body to be constituted by Government the ratio between the members of the Lok Sabha and Rajya Sabha should be 2:1.

The Ministry of Education replied as follows:-

> ... an amendment of clause (5) of Statutes 10 of the first Statutes of Visva-Bharati would be necessary in order to give effect to the recommendations of the Committee on Subordinate Legislation. Till such amendment is made the present provision on the Statutes will remain in force.'

70. The Committee recommended that the relevant clause of the Statutes of the university should be amended to provide that Parliament should be represented by 3 members so that it may be in accordance with the recommendation of the Committee.

V

The Rajghat Samadhi Committee constituted under Section 3 of the Rajghat Samadhi Act, 1951, (XLI of 1951)

71. No specific term of office of representatives of Lok Sabha on the Committee has been laid down in the Act or the Rules made thereunder.

72. There is no provision in the Act or the Rules made thereunder that if a member representing Lok Sabha on the Rajghat Samadhi Committee, ceases to be a member of Lok Sabha, he shall cease to be member thereof.

73. The Ministry of Works, Housing and Supply to whom the points were referred stated as under:

> 'It would not be possible to make any specific provisions in Rajghat Samadhi Rules, 1952 regarding the tenure of Members of Parliament on the Rajghat Samadhi Committee without appropriately amending the Rajghat Samadhi Act, 1951. Now that the two members of the Parliament on the Rajghat Samadhi Committee have been returned to the New Parliament, the Committee may like to consider whether provisions for tenure of the Members of Parliament on the Rajghat Samadhi Committee which would involve amendment to the Rajghat Samadhi Act 1951 itself is at all necessary just at present.

74. The Committee recommended that the Rajghat Samadhi Act may be amended to provide for specific term of office for M.Ps. on the Rajghat Samadhi Committee, with the proviso that they shall cease to be members of that Committee on ceasing to be members of Lok Sabha

VI

The Coir Board constituted under Section 4 of the Coir Industry Act, 1953, (XLV of 1953).

75. There is no provision in the Coir Industry Act, 1953 or the Rules made thereunder that if a member representing Lok Sabha on the Coir Board ceases to be member of Lok Sabha, he shall cease to be member thereof.

76. The Ministry of Commerce and Industry replied as under:-

The Ministry of Law are being consulted in the matter. The Government's intention is that when a member ceases to be a representative of his category he should cease to be a member of the Board. The existing rules, however, do not ensure this intention. The question of amending sub-rule 3 of Rule 4 of the Coir Industry Rules, 1954 is being taken up.

77. The Committee recommended that necessary amendments should be made in the Coir Industry Rules, 1954 to provide that the representatives of Lok Sabha shall cease to be members of the Board on ceasing to be member of the Lok Sabha.

78. Though the Members representing Lok Sabha on the Coir Board are elected by the House, yet there is no mention in the Coir Industry Rules, 1954, that they shall be elected by the House.

79. The Committee recommended that it should be specifically provided in the Rules that representatives of Lok Sabha acting on the Board shall be elected by the House.

80. The Board consists of about forty members. Parliament is represented on the Board by two members, one from Lok Sabha and one from Rajya Sabha. This is not in accordance with the recommendation of the Committee contained in Para 27 of their Third Report that if Parliament is represented on any body to be constituted by Government the ratio between the members of the Lok Sabha and the Rajya Sabha should be 2:1.

81. The Ministry of Commerce and Industry replied as under:-

'This matter will be considered while re-constituting the Coir Board for the second term which falls due on the 6th July, 1957.'

82. The Committee recommended that the Rules may be amended to provide that Parliament should be represented on the Coir Industry Board by 3 members, so that it may be in accordance with the earlier recommendation of the Committee.

The Committee then adjourned to meet after a fortnight on a date to be fixed by the Chairman.

ANNEXURE B

S. No.	No. of order and Subject	Date of Publication.	Date of laying.	Delay (Approximatel
1.	S.R.O. 2065 of 1956 amending Indian Aircraft Rules, 1937.	15-9-56	27-11-56	13 days.
2.	S.R.O. 2785 of '56 amending the Cinematograph (Censorship) Rules, 1951.	24-11-56	18- 3-57	4 months.
3.	S.R.O. 1885 of 1956 amending the Cotton Textiles (production by Handloom) Control Order, 1956.	23- 8-56	19- 3-57	7 months.
4.	S.R.O. 2403 of '56 amending the Cotton Textiles (Control) Order, 1948.	27-10-56	19- 3-57	4 months.
5.	S.R.O. 891 of '57 Medicinal & Toilet preparations (Excise duties) Rules, 1956.	23- 3-57	16- 5-57	1 month & 20 days.
6.	S.R.O. 662 of '57 amending Indian Aircrafts Rules, 1937.	2- 3-57	17- 5-57	2 months.
7.	S.R.O. 1040A of '57 amending Central Excise Rules, 1944.	6- 4-57	20- 5-57	10 days.
8.	S.R.O. 1040B of '57 amending Central Excise Rules, 1944.	6 -4-57	20- 5-57	10 days.
9.	S.R.O. 2735 of 1956 amending Schedule III to the I.P.S. (Pay) Rules, 1954.	24-11-56	20-5-57	6 months.
10.	S.R.O. 275 of 1957 amending All India Services (provident Fund) Rules, 1955.	26- 1-57	20 - 5-57	4 months.

S. No.	No. of order and Subject.	Date of Publication.	Date of laying.	Delay (Approximately).
11.	S.R.O.348 of 1957 amending All India Services (Leave) Rules, 1955.	2- 2-57	20- 5-57	2 months.
12.	S.R.O.539 of 1957 amending Schedule III-B to the I.P.S. (Pay) Rules, 1954.	23- 2-57	20- 5-57	2 months.
13.	S.R.O.855 of 1957 amending All India Services (Provident Fund) Rules, 1955.	23- 3-57	20- 5-57	2 months.
14.	S.R.O.856 of 1957 amending All India Services (Conduct) Rules, 1954.	23- 3-57	20- 5-57	2 months.
15.	S.R.O.908 of 1957 amending Cotton Textiles (Production by Handloom) Control Order, 1956.	23- 3-57	23- 5-57	2 months.
16.	S.R.O.1300 of 1957 amending the Customs Duties Drawback (Cigarette) Rules, 1955.	27- 4-57	24- 5-57	13 days.
17.	S.R.O.1299 of 1957 - Customs Duties Drawback (Pipe cigarette tobacco) Rules, 1957.	27- 4-57	20- 5-57	16 days.
18.	S.R.O.526 of 1957 - All India Services (Overseas Pay, Passages and Leave Salary) Rules, 1957.	15- 2-57	29- 5-57	2 months.
19.	S.R.O.1379 of 1957 - Customs Duties Drawback (dye-stuffs) Rules, 1957.	4- 5-57	30- 5-57	20 days.
20.	S.R.O.1591 of 1957 amending	18- 5-57	15- 7-57	2 months.

S. No.	No. of order and Subject.	Date of Publication.	Date of laying.	Delay (Approximately).
21.	S.R.O. 1429 of 1957 amending the All India Services (Provident Fund) Rules, 1955.	11- 5-57	17- 7-57	2 months.
22.	S.R.O. 1430 of 1957 amending Schedule III of the I.A.S. (Pay) Rules, 1954.	11- 5-57	17- 7-57	2 months.
~~23.~~	S.R.O. 1527 of 1957 amending the Indian Police Service(Recruitment) Rules, 1954.	18- 5-57	17- 7-57	2 months.
24.	S.R.O. 1582 of 1957.- The Customs Duties Drawback (Copper dusting preparations) Rules, 1957.	18- 5-57	17- 7-57	2 months.

III

THIRD SITTING

Parliament House, New Delhi - Thursday the 29th August, 1957.

The Committee met from 16.00 hours to 16.45 hours.

PRESENT

Sardar Hukam Singh - *Chairman*

MEMBERS

2. Shri Phani Gopal Sen
3. Shri Anand Chandra Joshi
4. Shri Harish Chandra Mathur
5. Shri R.M. Hajarnavis
6. Shri Sinhasan Singh
7. Shri Shamrao Vishnu Parulekar
8. Shri Aurobindo Ghosal
9. Shri J.M. Mohamed Imam
10. Shri Braj Raj Singh.

SECRETARIAT

Shri N.N. Mallya - *Deputy Secretary.*

Shri A.L. Rai - *Under Secretary.*

2. The Committee considered and took decisions on memoranda prepared by the Secretariat on the following subjects and Orders:-

(1) The Agricultural Produce (Development &

Warehousing) Corporations Rules, 1956 (S.R.O. 2408 of 1956) (Memo No. 21, Point 2 only)

(2) S.R.O. 1436 of 1957 amending the Central Opium Rules, 1934 (Memo. No. 26)

(3) All India Services (Overseas Pay, Passages and Leave Salary Rules, 1957 (S.R.O. 526 of 1957) (Memo. No. 28)

(4) The Customs Duties Drawback (Potassium Citrate) Rules, 1957 (S.R.O. 2249 of 1957) (Memo No. 30)

(5) Bye-laws of the Secundrabad Cantonment Board (S.R.O. 154 of 1957) (Memo No. 31)

(6) Delay in laying orders on the Table (Memo No. 32)

(7) The Calcutta Dock Workers (Regulation of Employment) Scheme, 1956 (S.R.O. 2315 of 1956) (Memo No. 33)

(8) S.R.O. 931 of 1955 amending the Mineral Concession Rules, 1949 (Memo No. 34).

The Agricultural Produce (Development & Warehousing) Corporations Rules, 1956 - (S.R.O. 2408 of 1956)

3. Rule 10(iv) of the Agricultural Produce (Development and Warehousing) Corporations Rules, 1956 empowers the Central Government to terminate the services of the Secretary appointed under Rule 10(ii) of the Rules at any time, without giving any reasons therefor, by giving three months notice.

4. The above rule seemed to give unusual power to the

Central Government to remove the Secretary without assigning any reason or giving him an opportunity of being heard.

5. The Ministry of Food and Agriculture to whom a reference was made stated as under :-

> ''xxx Rule 10 (iv) relating to the termination of the Services of the Secretary, Article 311 of the Constitution would not apply when the Secretary is not a Central Government Servant. It is permissible to the Corporation, like a private employer, to terminate the services of its employees upon a reasonable notice or where there is no agreement as to the period of notice, upon a notice for the period. Three months is considered reasonable notice. The fact that thepower is exercised by the Central Government instead of the Corporation makes no difference. As a good employer the Board would ordinarily give the Secretary an opportunity to represent his case. xxx.''

6. The Committee felt that in view of the fact that the services of the Secretary of the Corporation did not come within the provisions of Art. 311, the explanation given by the Ministry was satisfactory and no further action was necessary.

Amendments to the Central Opium Rules, 1934 (S.R.O. 1436 of 1957)

7. S.R.O. 1436 of 1957 amended the second proviso to rule 4 of the Central Opium Rules, 1934 which reads

as follows:-

> "Within the areas in the Punjab specified in rule 2 the poppy shall not be cultivated save under and in accordance with the conditions of a licence granted by an Excise Officer of the 1st Class of the district in the annexed form of licence."

X X X X X X

> "Provided further that any person who cultivates poppy without previously obtaining a licence may be granted a licence by the licence granting authority with retrospective effect, on payment forthwith of penalty at the rate fixed from time to time by the State Government, in addition to the duty due. Such penalty shall not be refunded. The patwari shall maintain a record of poppy cultivation in a register in the annexed form.

8. This proviso delegated to the State Government the power to fix penalty from time to time for cultivating poppy without previous licence.

9. Sec. 5(2) of the Dangerous Drugs Act, 1930, under which the said S.R.O. was made reads as under -

> "The Central Government may make rules permitting and regulating the cultivation of the poppy. (Papaver Somniferum L.) and the manufacture of opium, and such rules may prescribe the form and conditions of licences for such cultivation and manufacture, the authorities by which such licences may be granted, the fees

that may be charged therefor, and any other matter requisite to render effective the control of the Central Government over such cultivation and manufacture.''

10. The above Section did not appear to confer power on the Government to compound an offence and to impose a penalty for contravention of the provisions of the Act or the rules made thereunder. It was therefore, felt that the said proviso was beyond the rule-making power of the Government.

11. The Ministry of Law to whom the matter was referred held the view that since there was no absolute prohibition of cultivation of poppy it would be in order if the rules provide for the circumstances in which cultivation could be started even though licence had not been obtained. The Ministry of Finance intimated that a penal provision was made as a measure to render effective the control of Government over poppy cultivation in accordance with Section 5(2) of the Dangerous Drugs Act, 1930.

12. Since it was open to the executive to prosecute or compound an offence depending on the circumstances of each case the Committee felt that the explanation given by the Ministries was satisfactory and the matter need not be pursued further.

All India Services (Overseas Pay, Passages and Leave Salary) Rules, 1957 (S.R.O. 526 of 1957.

13. The All India Services (Overseas Pay, Passages and Leave Salary) Rules, 1957 were published on the 15th

February, 1957 but were given retrospective effect from the 12th July, 1956 by rule 1(3) which reads as follows:-

> "(3) They shall be deemed to have come into force on the twelfth day of July, 1956."

14. These rules were made under the All India Services Act, 1951 which does not expressly empower the Government to give retrospective effect to the rules, thereunder.

15. The Ministry of Home Affairs to whom the above point was referred replied as follows:-

> "xxx the Government have generally been acting on the view that rules framed or notifications issued under an Act of Legislature cannot be given retrospective effect unless the Act expressly conferred power to frame rules or issue notifications with retrospective effect. The Supreme Court however, has indicated that the reason why the retrospective operation of laws is disfavoured is that it may prejudicially affect vested rights and upheld a notification bringing an Act of Legislature into force with retrospective effect on the ground that the circumstances of the case did not affect the principle disfavouring the retroactive operation of a statute as there was no question of affecting vested rights in the case. (Musaliar *vs.* M.V. Pooti: 1956 SCA 259 at 279). In another case, Mohammed Ghouse *vs.* the State of Andhra (Unreported: Civil Appeal No. 133 of 1956) decided on 29.11.56, the Supreme Court proceeded on the basis that certain

service rules giving retrospective effect were not objectionable.

As regards the present notification the position is that the officers concerned were given intimation of the decisions incorporated in the All India Services (Overseas Pay, Passages and Leave Salary) Rules, 1957 by a memorandum dated the 12th July, 1956 and it was, therefore, that the said Rules were given effect to from that date. In view of the aforesaid Supreme Court rulings the retrospective operation of the Rules could possibly be justified in law.''

16. In view of the fact that the officers affected by the Rules had been given advance intimation of the provision of the Rules as early as the 12th July, 1956, the date from which the rules were given retrospective effect the Committee felt that the officers were not pre-judicially affected by the reeptrospective effect of the rules. The Committee however recommended that retrospective effect to any provision should not be given by rules unless the Act expresaly conferred such powers.

The Customs Duties Drawback (Potassium Citrate) Rules, 1957 (S.R.O. 2249 of 1957)

17. S.R.O. 2249 of 1957 containing the Customs Duties Drawback (Potassium Citrate) Rules, 1957 were published on 6th July, 1957 but were brought into force with effect from 1st July, 1957.

18. Section 43-B of the Sea Customs Act, 1878 under which the rules have been made does not authorise the

Government to give retrospective effect to the rules made thereunder.

19. As the parties concerned were not adversely affected by the retroaction of the rules the Committee felt that no further action was necessary.

20. The Committee however emphasised that retrospective effect to any provision should not be given through the rules unless the Act expressly conferred such powers.

Bye-laws of the Secundrabad Cantonment Board (S.R.O. 154 of 1957)

21. Clause 8 of the 'Bye-laws for the control and supervision of places where sale of fire-works is carried on within the limits of Secundrabad Cantonment' requires that the licensee shall deposit a ground rent of Rs. 5/- at the time of applying for the licence to carry on the business of fireworks.

22. It was felt that the provision for the levy of ground rent was beyond the bye-law-making power of the Cantonment Board as Section 282 (17) of the Cantonments Act, 1924 under which the said bye-laws were made, did not authorise the Board to levy such a charge.

23. The Ministry of Defence to whom the point was referred, had intimated that necessary action would be taken to omit the clause in question.

24. The Committee noted the Ministry's assurance.

Delay in laying of 'Orders' on the Table.

25. The Committee in their earlier reports had recom-

mended that all rules required to be laid should be laid within a period of 7 days after their publication in the Gazette, if the House is then in session, if it is not then in session, the Ministries should ensure that the 'Orders' are laid on the Table as soon as possible (but within 7 days) after the commencement of the following session.

26. The Committee noted that there was much improvement in this regard, however they felt that the recommendation was not complied in several cases. The Committee hoped that the Ministries would in future strictly follow the recommendation and lay the rules within the prescribed time-limit of seven days.

27. The Committee further observed that as already recommended by them at their last sitting, whenever rules were placed on the Table of the House after the prescribed period of seven days they should be accompanied by a statement explaining the reasons for the delay.

28. The Committee decided that delay in laying 'Orders' on the Table shown in Annexure C should be reported to the House.

The Calcutta Dock Workers (Regulation of Employment) Scheme, 1956 (S.R.O.No. 2315 of 1956)

29. Clause 15(1)(d) of the Calcutta Dock Workers (Regulation of Employment) Scheme, 1956 provides that a registration fee of Rs.500/- shall be payable by certain category of stevedores or stevedoring firms. Section 3(2)(c) of the parent Act provides for levying of regis-

tration fee in respect of Dock Workers only and not stevedores. It was felt that in the absence of any specific authorisation the levy of registration fee of Rs. 500/- was beyond the rule-making power of the Government.

30. The Ministry of Law to whom the point was referred, stated as under:

> 'Registration of employers may be regarded as incidental or supplementary to the scheme of registration of workers and the application of the scheme to the employers.' [Sec. 3(2)(k) of the parent Act lays down that a scheme may provide for any other incidental or supplementary matters] 'Guaranteeing minimum pay to workers during periods of unemployment involves extra cost and has to be met from contributions made by employers. The fee for registration of employers serves not merely as payment towards expenses connected with registration but also the employers' contribution to the cost of operating the scheme'.

31. The Committee felt that levy of registration fee on the Stevedores (employers) should be provided in the *Act* itself.

32. Second Proviso to clause 15(1)(e) of the Calcutta Dock Workers (Regulation of Employment) Scheme, 1956 gives discretionary power to the Board to dissolve the group of registered employers formed under the scheme, if it is satisfied that the employers have failed to comply with the conditions prescribed for the formation of such groups.

33. It was felt that the dissolution of a group might affect the employers financially and as there was no right of appeal against the orders of the Board an opportunity of being heard should have been given to the aggrieved

employers.

34. The Ministry of Labour stated as under:-

> 'Clause 15(1)(e) of the Scheme provides for a group of employers being treated as one employer in respect of employment of monthly workers under them. This provision was incorporated on the recommendations of the Dock Workers Enquiry Committee contained in paragraph 825 of its report. It was however considered necessary to ensure that this provision was not abused by the employers by exploiting the monthly gangs and with this object in view the second proviso to clause 15(1)(e) was inserted.
>
> The power to dissolve a group of employers is vested in the Dock Labour Board, which includes representatives of employers. The employers will have, therefore, ample opportunity to put their view before the Board when a proposal for the dissolution of a group of employers is considered by it. It is, therefore, not necessary to provide for a group of employers concerned being heard before action is taken under clause 15(1)(e)'.

35. The Committee felt that the dissolution of a group might affect the employers financially and as there was no right of appeal against the orders of the Board an opportunity of being heard should have been given to the aggrieved employers and the rules should be amended accordingly.

S.R.O.931 of 1955 - Amending the Mineral Concession Rules, 1949.

36. In connection with rule 51A of the Mineral Concession Rules, 1949 an objection was raised that power to regulate mining leases etc. could not be delegated to State Governments through rules without prior notification to that effect, because such power was exercisable by the Central Government

only under the parent Act - Mines and Minerals (Regulation and Development) Act, 1948.

37. The Ministry concerned stated that the rule would be amended suitably and an order under Article 258(1) of the Constitution formally entrusting the functions of the Central Government to the State Governments would be issued.

38. The Committee at their sitting held on the 7th September, 1956 decided to watch further action on the Ministry's part.

39. Subsequently the Ministry intimated (Ministry of N.R. & S.R. O.M., dated the 20th February, 1957) that a new Bill which would incorporate *inter alia* suitable provisions for delegation of powers to State Governments and other sub-ordinate authorities, was under consideration.

40. The new Bill - Mines and Minerals (Regulation and Development) Bill, 1957, - has been introduced in the Lok Sabha on 29.7.57.

41. Clause 25(3) of the said Bill contains provisions for conferring powers of the Central Government on the State Government by rules.

42. The Committee noted that the provisions of the new Bill met the intentions of the Committee.

43. * * * * *

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* Omitted portions are not covered by the First Report.

ANNEXURE C

S. No.	No. of Order and Subject.	Date of Publication.	Date of laying.	Delay (Approximately).
1.	S.R.O.No.1986 of 1957 - Inter-zonal Wheat Movement Control Order, 1957.	13- 6-57	29- 7-1957	14 days.
2.	S.R.O.No.1983 of 1957 - amending the Bombay Wheat (Movement Control) Order, 1956.	13- 6-57	-do-	-do-
3.	S.R.O.No.1984 of 1957 - amending the Calcutta Wheat (Movement Control) Order.	-do-	-do-	-do-
4.	S.R.O.No.2251 of 1957 - amending the Orissa Rice (Prohibition of Export) Order, 1957.	6-7- 57	-do-	-do-
5.	S.R.O.No.1851 of 1957 - amending the Bombay Wheat (Movement Control) Order, 1956.	3-6-57	-do-	-do-
6.	S.R.O.No.1852 of 1957 - Bombay Rice (Export Control) Order, 1957.	-do-	-do-	-do-
7.	S.R.O.No.2374 of 1957 - amending the Displaced Persons (Compensation and Rehabilitation) Rules, 1955.	20-7 -57	5-8 -57	16 days.
8.	S.R.O.No.2158 of 1957 - amending the Coal Mines Pithead Bath Rules, 1946.	29-6-57	-do-	20 days.
9.	S.R.O.No.1808 of 1957 - amending the Indian Aircraft Rules, 1937.	1-6- 57.	6-8- 57	21 days.

S. No.	No. of Order and Subject.	Date of Publication	Date of laying.	Delay (Approximately)
10.	S.R.O.No.1154 of 1957 - Ministers (Allowances, Medical Treatment and other privileges) Rules, 1957.	13-4-57	9-8-57	3 months.
11.	S.R.O.No.1971 of 1957 - amending Registration of Newspapers (Control) Rules, 1956.	15-6-57	-do-	24 days.
12.	S.R.O.No.1863 of 1957 - amending the Ministers' (Allowances Medical Treatment and other privileges) Rules, 1957.	8-6-57	-do-	-do-

IV

(FOURTH SITTING)

Parliament House, New Delhi - Wednesday the 11th September, 1957.

The Committee met from 16.00 hours to 16.20 hours.

PRESENT

Sardar Hukam Singh — *Chairman*

MEMBERS

2. Shri Phani Gopal Sen
3. Shri Harish Chandra Mathur
4. Shri R.M. Hajarnavis
5. Shri Sinhasan Singh
6. Shri Bahadur Singh
7. Shri T.N. Viswanatha Reddy
8. Shri Aurobindo Ghosal

SECRETARIAT

Shri N.N. Mallya - *Deputy Secretary.*

Shri A.L. Rai - *Under Secretary.*

2. The Committee considered the draft of the First Report and adopted the same.

3. The Committee authorised the Chairman to present the Report to the House.

4. The Committee then adjourned *sine die.*

752-L.S.R.P.-250-13-12-57.